CLASS 4.

Norman Armour to be a secretary of embassy or legation of class 4.
Allen W. Dulles to be a secretary of embassy or legation of class 4.
John Heath to be a secretary of embassy or legation of class 4.
Williamson S. Howell, jr., to be a secretary of embassy or legation of class 4.
Ferdinand L. Mayer to be a secretary of embassy or legation of class 4.
Stokeley W. Morgan to be a secretary of embassy or legation of class 4.
Lithgow Osborne to be a secretary of embassy or legation of class 4.
William S. Van Rensselaer to be a secretary of embassy or legation of class 4.
Robert Van Wyck Maverick to be a secretary of embassy or legation of class 4.
John C. Wiley to be a secretary of embassy or legation of class 4.
Robert M. Scotten to be a secretary of embassy or legation of class 4.

CONSULS.

CLASS 5.

Charles L. Hoover to be a consul of class 5.
James Oliver Laing to be a consul of class 5.

MEMBER OF THE FEDERAL RESERVE BOARD.

Charles S. Hamlin to be a member of the Federal Reserve Board.

REGISTER OF LAND OFFICE.

Robert Connaghan to be register of the land office at Lander, Wyo.

COAST GUARD.

First Lieut. of Engineers John Brown Coyle to be captain of engineers in the Coast Guard.

POSTMASTERS.

CALIFORNIA.

O. C. Goodin, Orosi.

CONNECTICUT.

W. H. Wall, Hampton.

FLORIDA.

George I. Davis, Tallahassee.

GEORGIA.

H. S. Tucker, Lumber City.

IOWA.

W. E. Cox, Deep River.

MASSACHUSETTS.

Frederick M. Fowler, Foxboro.
William B. Kelly, Ware.
James Sheehan, Millis.
James H. Walsh, Leominster.

MINNESOTA.

Mayme Murphy, Tower.
A. L. Reichert, Red Lake Falls.
George W. Shipton, Ogilvie.

KANSAS.

G. W. Wasson, Peru.

MONTANA.

William Moser, Thompson Falls.
James A. Goodrich, Conrad.
Anna S. Gossink, Lavina.

NEVADA.

Walter J. McKeough, Aurora.

NEW HAMPSHIRE.

Oscar Duncan, Alton.

NEW YORK.

William H. Hickey, Mechanicsville.
William W. Paige, Ogdensburg.

OHIO.

Lawrence Schunck, Celina.

PENNSYLVANIA.

J. H. Aten, Ambridge.
John C. Miller, Halifax.
John B. Oehrl, Monongahela.
S. S. Staples, White Haven.

OKLAHOMA.

A. E. Williams, Hammon.

SOUTH DAKOTA.

C. H. Bonnie, Wagner.

TEXAS.

James V. Townsend, Vernon.

WISCONSIN.

Frank H. Rogers, Fort Atkinson.
G. W. Schiereck, Plymouth.

VERMONT.

John O'Donnell, Pittsford.

SENATE.

FRIDAY, *August 4, 1916.*

(Legislative day of Tuesday, August 1, 1916.)

The Senate reassembled at 10 o'clock a. m., on the expiration of the recess.

LANDS AT PORT ANGELES, WASH.

Mr. ROBINSON. Mr. President——

Mr. MYERS. Will the Senator from Arkansas yield to me for a moment?

Mr. ROBINSON. I yield to the Senator from Montana.

Mr. MYERS. I ask leave to submit a favorable report from the Committee on Public Lands, and I call the attention of the Senator from Washington [Mr. POINDEXTER] to it.

From the Committee on Public Lands I report back favorably with amendments the bill (S. 6561) providing for the sale at public auction of all unsold suburban lots not reserved for public purposes in the Government town site of Port Angeles, Wash., and for the issuance of patents for those previously sold under the act of May 6, 1906, on the payment of the price at which the said lots were reappraised under said act without further condition or delay.

Mr. POINDEXTER. Mr. President——

Mr. SMOOT. I will ask the Senator if this is an emergency matter?

Mr. POINDEXTER. It is an emergency matter. I ask for the present consideration of the bill.

There being no objection, the bill was considered as in Committee of the Whole.

The amendments were, on page 1, line 8, after the word "May," to strike out "sixth" and insert "second"; on page 2, line 2, to strike out "sixth" and insert "second"; in line 6, to strike out "sixth" and insert "second"; in line 9, to strike out "sixth" and insert "second"; and in line 12, to strike out "sixth" and insert "second," so as to make the bill read:

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized and directed to sell at public auction to the highest bidder all unsold suburban lots not reserved for public purposes in the Government town site of Port Angeles, Wash., at not less than the value at which they were reappraised under the act of May 2, 1906.

SEC. 2. That as to all suburban lots of said town site heretofore sold under the act of May 2, 1906, or previous acts, patents for the said lots shall be issued to each purchaser upon payment in full by said purchaser or claimant of the reappraised price of such lot or lots as returned under the act of May 2, 1906, irrespective of whether such purchaser shall have improved said lot to the value of $300, as required by said act of May 2, 1906.

SEC. 3. That all acts or parts of acts relating to said lots in conflict herewith, and particularly that part of the act of May 2, 1906, stipulating improvements to the value of $300 required to be made upon each such suburban lot prior to the issuance of patent, are hereby repealed.

The amendments were agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill providing for the sale at public auction of all unsold suburban lots not reserved for public purposes in the Government town site of Port Angeles, Wash., and for the issuance of patents for those previously sold under the act of May 2, 1906, on the payment of the price of which the said lots were reappraised under said act without further condition or delay."

CALLING OF THE ROLL.

Mr. PENROSE. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Brady	Culberson	Hardwick	Kern
Brandegee	Cummins	Hollis	La Follette
Bryan	Curtis	Husting	Lane
Chamberlain	Dillingham	Johnson, S. Dak.	Martin, Va.
Clapp	Gallinger	Jones	Martine, N. J.
Clark, Wyo.	Gronna	Kenyon	Myers

Nelson	Pomerene	Smith, S. C.	Townsend
Newlands	Ransdell	Smoot	Vardaman
Oliver	Robinson	Stone	Wadsworth
Overman	Saulsbury	Swanson	Walsh
Page	Sheppard	Taggart	Warren
Penrose	Sherman	Thomas	Works
Pittman	Simmons	Thompson	
Poindexter	Smith, Ga.	Tillman	

Mr. MARTINE of New Jersey. I desire to announce that the Senator from West Virginia [Mr. CHILTON] is absent on public business and that he is paired with the Senator from New Mexico [Mr. FALL].

I wish also to state that the Senator from Louisiana [Mr. BROUSSARD] is detained at his home by illness.

The VICE PRESIDENT. Fifty-four Senators have answered to the roll call. There is a quorum present.

CHILD LABOR.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 8234) to prevent interstate commerce in the products of child labor, and for other purposes.

The VICE PRESIDENT. The Senator from Arkansas [Mr. ROBINSON] is entitled to the floor.

Mr. ROBINSON. Mr. President, on yesterday I attempted to explain the provisions of the Senate committee substitute and to compare them with the bill as passed by the House, and also to point out what appear to be improvements made by the Senate substitute in the pending legislation. An effort was also made to discuss some of the reasons or grounds justifying Federal child-labor legislation. I presented some views concerning the constitutionality of the proposed bill, and at the time when the Senate recessed I was contending that the pending bill does not violate the fifth amendment to the Federal Constitution, providing that no person shall be deprived of life, liberty, or property without due process of law, and had pointed out that the fifth amendment imposes the same limitations on Federal action, and no more, that the fourteenth amendment places on State action, and that if it is competent for a State, in the exercise of its police powers, to pass a child-labor law it is within the authority of Congress through a regulation of commerce, in the nature of a police regulation, to aid in suppressing the evils of child labor by denying to persons and enterprises engaged in such abuses the channels and instrumentalities of commerce. I had just pointed out the fact that the only limitation on such regulations is that they must be reasonable and not arbitrary.

The scope of the police power has never been completely defined, but seems to be expanding rather than contracting under the decisions of our courts.

In Chicago Railway Co. *v.* McGuire (219 U. S., 567), the court said:

> Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions in the interests of the community.

Further illustrating the extent of the police power, it was said in McLean *v.* Arkansas (211 U. S., 539):

> The mere fact that a court may differ with the legislature in its views of public policy, or the judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act enacted is unquestionably and palpably in excess of the legislative power.

The power of Congress to regulate commerce, being absolute and unlimited, except as provided by the Constitution itself, and the only limitation in the Constitution as to this legislation being the fifth amendment, it becomes a question whether this legislation would constitute a deprival of the property of a citizen without due process of law. It appearing that reasonable regulations are not violative of the due-process clause, the final question to be determined is whether this is a reasonable or arbitrary regulation.

In support of this position I read what the Supreme Court of the United States has said in the Lottery Cases (188 U. S., p. 354). First, reading from page 353, the court uses this language:

> They—

Meaning the cases already referred to—

> They also show that the power to regulate commerce among the several States is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States; that such power is plenary, complete in itself, and may be exerted by Congress to its utmost extent, subject only to such limitations as the Constitution imposes upon the exercise of the powers granted by it; and that in determining the character of the regulations to be adopted Congress has a large discretion which is not to be controlled by the courts, simply because, in their opinion, such regulations may not be the best or most effective that could be employed.

Again, on page 354, there is this language:

> But it is said that the statute in question does not regulate the carrying of lottery tickets from State to State, but by punishing those who cause them to be so carried Congress in effect prohibits such carrying; that in respect of the carrying from one State to another of articles or things that are, in fact, or according to usage in business, the subjects of commerce, the authority given Congress was not to prohibit, but only to regulate. This view was earnestly pressed at the bar by learned counsel, and must be examined.
>
> It is to be remarked that the Constitution does not define what is to be deemed a legitimate regulation of interstate commerce. In Gibbons *v.* Ogden it was said that the power to regulate such commerce is the power to prescribe the rule by which it is to be governed. But this general observation leaves it to be determined, when the question comes before the court, whether Congress in prescribing a particular rule has exceeded its power under the Constitution. While our Government must be acknowledged by all to be one of enumerated powers, McCulloch *v.* Maryland (4 Wheat., 316, 405, 407), the Constitution does not attempt to set forth all the means by which such powers may be carried into execution. It leaves to Congress a large discretion as to the means that may be employed in executing a given power. The sound construction of the Constitution, this court has said, "must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional. (4 Wheat., 421.)
>
> We have said that the carrying from State to State of lottery tickets constitutes interstate commerce, and that the regulation of such commerce is within the power of Congress under the Constitution. Are we prepared to say that a provision which is, in effect, a prohibition of the carriage of such articles from State to State is not a fit or appropriate mode for the regulation of that particular kind of commerce? If lottery traffic, carried on through interstate commerce, is a matter of which Congress may take cognizance and over which its power may be exerted, can it be possible that it must tolerate the traffic, and simply regulate the manner in which it may be carried on? Or may not Congress, for the protection of the people of all the States, and under the power to regulate interstate commerce, devise such means within the scope of the Constitution, and not prohibited by it, as will drive that traffic out of commerce among the States?

On page 356 I find this language:

> If a State, when considering legislation for the suppression of lotteries within its own limits, may properly take into view the evils that inhere in the raising of money, in that mode, why may not Congress, invested with the power to regulate commerce among the several States, provide that such commerce shall not be polluted by the carrying of lottery tickets from one State to another? In this connection it must not be forgotten that the power of Congress to regulate commerce among the States is plenary, is complete in itself, and is subject to no limitations except such as may be found in the Constitution. What provision in that instrument can be regarded as limiting the exercise of the power granted? What clause can be cited which, in any degree, countenances the suggestion that one may, of right, carry or cause to be carried from one State to another that which will harm the public morals? We can not think of any clause of that instrument that could possibly be invoked by those who assert their right to send lottery tickets from State to State except the one providing that no person shall be deprived of his liberty without due process of law. We have said that the liberty protected by the Constitution embraces the right to be free in the enjoyment of one's faculties; "to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts that may be proper." (Allgeyer *v.* Louisiana, 165 U. S., 578, 589.) But surely it will not be said to be a part of any one's liberty, as recognized by the supreme law of the land, that he shall be allowed to introduce into commerce among the States an element that will be confessedly injurious to the public morals.
>
> If it be said that the act of 1895 is inconsistent with the tenth amendment, reserving to the States, respectively, or to the people the powers not delegated to the United States, the answer is that the power to regulate commerce among the States has been expressly delegated to Congress.
>
> Besides Congress by that act does not assume to interfere with traffic or commerce in lottery tickets carried on exclusively within the limits of any State, but has in view only commerce of that kind among the several States. It has not assumed to interfere with the completely internal affairs of any State, and has only legislated in respect of a matter which concerns the people of the United States. As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the "widespread pestilence of lotteries" and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another. In legislating upon the subject of the traffic in lottery tickets as carried on through interstate commerce Congress only supplemented the action of those States—perhaps all of them—which for the protection of the public morals prohibit the drawing of lotteries as well as the sale or circulation of lottery tickets within their respective limits.

On page 358 is found this language:

> If the carrying of lottery tickets from one State to another be interstate commerce, and if Congress is of opinion that an effective regulation for the suppression of lotteries carried on through such commerce is to make it a criminal offense to cause lottery tickets to be carried from one State to another, we know of no authority in the courts to hold that the means thus devised are not appropriate and necessary to protect the country at large against a species of interstate commerce which, although in general use and somewhat favored in both national and State legislation in the early history of the country, has grown into disrepute and has become offensive to the entire people of the Nation. It is a kind of traffic which no one can be entitled to pursue as of right.

In the Hoke case (227 U. S., 319), sustaining the so-called white-slave act, the Supreme Court held a statute enacted by Congress under the power to regulate commerce forbidding the interstate transportation of women for immoral purposes a valid exercise of the power, and that it partakes of the quality of a police regulation. In the lottery cases, the Congress used its

power to regulate commerce to protect the public against raising money in the States by the sale of lottery tickets, which had come to be regarded as a form of gambling. The real purpose was to suppress lotteries, and it was accomplished through a regulation of commerce in the nature of a police regulation.

In the Hoke case the instrumentalities of commerce were denied to suppress or diminish immorality. In view of these decisions Congress can aid in removing the evils of child labor by denying the instrumentalities of commerce to those who employ children in such ways and under such conditions as to constitute a public evil or menace.

In the Hoke case Mr. Justice McKenna said:

> It may be that Congress could not prohibit the manufacture of the article in a State. It may be that Congress could not prohibit in all of its conditions its sale within a State. But Congress may prohibit its transportation between the States, and by that means defeat the motive and evils of its manufacture (227 U. S., 322).

These cases support the doctrine that the power of Congress to regulate commerce extends to the denial of the channels of interstate commerce for use by an enterprise which is so operated as to be detrimental to the public health or morals, and, therefore, Congress has the power to deny the channels of interstate commerce to a person or establishment in which objectionable child labor is employed.

It is said by some who oppose this bill that the power of Congress to exclude articles from commerce is limited to such articles as are themselves detrimental to commerce. But this conclusion is not supported by the plain doctrine of the Lottery cases and the Hoke case. On the contrary, the doctrine of these cases seems to be that the power of Congress to regulate commerce may be exerted in the interest of the health, morals, and safety of the public.

There can be no distinction in law between a regulation of commerce partaking of the quality of a police regulation intended to suppress an evil after the commerce is completely terminated, and another designed to suppress an evil before that commerce begins, provided the end to be accomplished is obtained through a regulation of commerce.

Congress has no more direct control over an article after it has passed out of commerce into the general property of the State than before it has entered that commerce. It has an equal right to use its regulatory power to suppress evils concerning the manufacture of an article as it has to protect the public from the dangers growing out of its wrongful use after commerce in that article has terminated.

This bill is clearly a regulation of commerce. That it partakes of the quality of a police regulation does not in any wise impair its validity. The effect of this measure is to suppress conditions which Congress regards as evil concerning the employment of children in the State by denying to persons and enterprises employing proscribed child labor the instrumentalities of commerce. It seems, therefore, clearly within the power of Congress to enact.

Summarizing this argument supporting the constitutionality of the bill, the power of Congress to regulate commerce is complete and absolute, except as limited by the Constitution itself. This power is as absolute in Congress as it would be in a single Government having in its constitution the same limitations to exercise power as are contained in the Constitution of the United States. The only limitation in the Federal Constitution on the power of Congress to regulate commerce, in so far as this bill is concerned, is the fifth amendment, which provides that no person shall be deprived of life, liberty, or property without due process of law. The fifth amendment imposes the same limitation on the Federal authority as that placed by the fourteenth amendment on State action, and no more. Therefore, if the States, in the exercise of the police power, can suppress the evils of child labor, Congress, through its power to regulate commerce, can promote the same end by denying the channels and instrumentalities of commerce to persons and enterprises so employing child labor as to constitute an evil detrimental to the public health, morals, and safety. Congress can indirectly accomplish a great many things that it can not directly perform, as is well illustrated by the Lottery cases, the White Slave cases, the so-called Seven cases, and many other decisions of the United States Supreme Court affirming the power of Congress to enact legislation partaking of the quality of police regulations in the exercise of its power to regulate commerce. The tenth amendment, providing that the powers not delegated by the Constitution to the Federal Government are reserved to the States, respectively, or to the people, has no application, since the power to regulate commerce is a delegated power, and not a reserved power. The tenth amendment can have no application to delegated powers. It relates solely to reserved rights. The power to regulate commerce being a delegated power, is in nowise limited by the tenth amendment. Congress has as much power to suppress recognized evils in conditions surrounding the production or manufacture through a regulation of commerce as it has to suppress the same after transportation has ended. While the constitutionality of this bill is not conclusively demonstrable, its provisions are fairly within the principles laid down in the Lottery cases and the Hoke case, and it is for these reasons a valid exercise of the power of Congress to regulate commerce, partaking of the quality of a police regulation.

Mr. WORKS. Mr. President, would it disturb the Senator if I should suggest to him something that is troubling my mind in connection with this measure?

Mr. ROBINSON. Not at all. I should be glad to have the Senator do so.

Mr. WORKS. I think there is no doubt of the power of Congress to deal with interstate commerce in any form, but the question that troubles me in this matter is whether or not this is an interstate matter. I can understand very well why the power of Congress should be extended to the distribution over the country of lottery tickets, because the evil is just as great in the State to which they are carried as it is in the State from which they are sent; but that is not true respecting the manufacture of goods that are not hurtful in themselves. The transportation of them is not harmful and the use of them in other States is not detrimental to the interests of those States; neither is the actual transportation of them from one State to another. The evil here is strictly and solely within a State; that is to say, the use of children in the manufacture of goods. It does not extend to other States; it does not extend to transportation itself from one State to another. Therefore, the question in my mind is, whether it is interstate commerce that is being dealt with in this kind of legislation. I say, with all deference, that I think the Lottery cases do not reach this question, for the reason I have suggested, and it is a very troublesome question to my mind. I am in entire sympathy with this legislation if it is going to accomplish what is intended, but I must say that I have very grave doubt about the constitutionality of it.

Mr. ROBINSON. Mr. President, in the beginning of my argument I pointed out the fact that there is no exact precedent in the legislation of this country for this bill, and for that reason there is no exact precedent in the decisions of the courts; but throughout my argument it is contended that, under the principle of the lottery cases and the Hoke case, this legislation is within the power of Congress.

The Senator from California has said that he can readily see that a lottery ticket is detrimental to commerce itself, and that it is detrimental to every State through which it is carried, and therefore it would be within the regulative power of Congress. Mr. President, a lottery ticket as such can do no harm to commerce.

It was not the purpose of Congress in enacting the lottery act of 1895 to protect commerce from lotteries. The primary purpose was to suppress an evil within the States, to protect the public against the "widespread pestilence of lotteries." What harm, I ask the Senator from California, can the shipment of a package of lottery tickets do to commerce? The harm is done after the lottery tickets are delivered in a State and when the gambling transactions occur.

Mr. WORKS. Well, Mr. President, it is not so much a question of the injury that results from the mere act of transportation. I think the Senator is right about that; but the trouble about it is, and the distinction between that and the case before the Senate is, that you are carrying an evil into another State, which the other State is not able to keep out, as is suggested by the Senator from Georgia [Mr. SMITH].

Mr. ROBINSON. Mr. President, it is also true that if Congress can exercise its power to regulate commerce in the interest of public health, safety, and morals, it makes no difference whether the result is to be accomplished before the commerce begins or after it ends.

Mr. WORKS. That is very true; but has Congress the right to deal with any particular matter as affecting the public health, unless it is something that does affect the health of another State, either after it leaves the State of origin or in passing from one State to another?

Mr. ROBINSON. Yes; I have discussed that subject very fully during the course of my remarks.

Mr. WORKS. I am very sorry that I did not hear what the Senator said on yesterday. I did not know that this measure was coming up, but I am very much interested in it, and I am very glad to hear what the Senator is saying about it now.

Mr. ROBINSON. I have discussed that subject very fully during the course of my remarks, and I was just in the act of

concluding what I have to say upon the bill when the Senator from California interrupted me. I think it would be something of an imposition on the Senate to repeat my argument in that particular, so I will merely conclude it by saying that there is no distinction in law between the exercise of the power of Congress to regulate commerce to suppress evils in a State before the commerce begins and the exercise of the power for the same purpose after the commerce ends. The principle is the same.

Mr. WORKS. I certainly should not ask the Senator to repeat anything for my benefit which he has already said. I can read what the Senator has said, but these matters suggested themselves to my mind. I am sorry to have interrupted the Senator.

Mr. ROBINSON. I have said that the question is not conclusively demonstrable. It is a great and very important question. In view of the history of the commerce clause and considering the trend of the decisions of the Supreme Court of the United States, this bill seems to be within the power of Congress to enact in the exercise of the power to regulate commerce, and I believe it will be so held by the Supreme Court of the United States.

Mr. KENYON. Mr. President, may I ask the Senator a question before he sits down as to the bill itself, and not as to its constitutional features?

Mr. ROBINSON. Certainly.

Mr. KENYON. The substitute for the House bill, reported by the Senate committee, beginning on page 5, line 8, commences as follows:

That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine or quarry, situated in the United States, in which within 30 days prior to the time of the removal of such product therefrom—

I ask the Senator's attention to the words "prior to the time of the removal of such product therefrom." Suppose a case arises where the product of a factory is taken to a warehouse and kept in a warehouse for 30 days, or 60 days, or 90 days, how, then, under this bill, could there be any enforcement of its provisions?

Mr. ROBINSON. The factory from which the goods were sent would have to suspend the employment of objectionable child labor in order to escape the penalties of the statute.

Mr. KENYON. If the particular product, then, should be taken from the warehouse and delivered to the carrier, could not the law be absolutely evaded in that way?

Mr. ROBINSON. No; I think not. That question was fully considered by the committee. It could be evaded if a manufacturing establishment ceased its operations at a given time; but the provision is continuing, and the manufacturer would have to suspend the employment of the child labor in order to continue his operations or become liable to the penalties.

Mr. KENYON. Even from a warehouse?

Mr. ROBINSON. Yes.

Mr. KENYON. I did not know but that the bill would be strengthened by some proviso to the effect that removal to a warehouse or to any other separate establishment, should be accounted as a delivery under the terms of the bill, or something of that character. I am afraid there is a little weakness there.

Mr. ROBINSON. I think perhaps there would be no objection to such an amendment, but, of course, before I undertake to determine this I would have to see the amendment.

Now, Mr. President, I will now conclude what I have to say upon this subject.

It is to be hoped that the Congress may speedily complete its labors and adjourn. Many important matters remain undisposed of for consideration by the Senate. It is now universally conceded that the pending bill will pass by an overwhelming majority. The measure will be fully discussed. There ought not to be any unnecessary delay in reaching a final conclusion here concerning this important subject. The demand for the legislation seems to be quite general. It is a part of the forward movement in American social and industrial conditions, and no power can stay its advance.

I thank my colleagues for the very courteous interest they have manifested in my views.

Mr. HARDWICK obtained the floor.

Mr. THOMAS. Mr. President, will the Senator permit me?

Mr. HARDWICK. I yield to the Senator from Colorado?

Mr. THOMAS. I desire to offer a proposed amendment, which I ask to have read, printed, and lie over.

The VICE PRESIDENT. The amendment will be read.

The SECRETARY. On page 5, line 24, after the word "meridian," it is proposed to strike out the colon and insert a comma and the following words:

Or any article or commodity the product of any farm which is the material for the product of any mill, cannery, workshop, factory, or manufacturing establishment in the United States upon which children under the age of 14 years have been employed or permitted to work or children between the ages of 14 and 16 years have been employed or permitted to work more than 11 hours a day.

Mr. HARDWICK. Mr. President, if every Senator who is now in the Chamber had heard all of the remarks of the junior Senator from Arkansas [Mr. ROBINSON], or if every person who shall read the remarks that I intend to make would also read those remarks, I would not at this stage of my remarks on this bill repeat some things that the Senator had said about the provisions of this bill as passed by the House of Representatives and as recommended by the Senate Committee on Interstate Commerce.

The bill (H. R. 8234) provides, in substance—

That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate commerce the product of any mine or quarry situated in the United States which has been produced, in whole or in part, by the labor of children under the age of 16 years, or the product of any mill, cannery, workshop, factory, or manufacturing establishment situated in the United States which has been produced, in whole or in part, by the labor of children under the age of 14 years or by the labor of children between the ages of 14 years and 16 years who work more than 8 hours in any one day, or more than six days in any one week, or after the hour of 7 o'clock p. m., or before the hour of 7 o'clock a. m.

I shall not read the other provisions of the House bill. The substance of the proposition of the House is embraced in the language I have just read to the Senate.

As a substitute for that the Senate committee proposes the following:

That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine or quarry, situated in the United States, in which within 30 days prior to the time of the removal of such product therefrom children under the age of 16 years have been employed or permitted to work, or any article or commodity the product of any mill, cannery, workshop, factory, or manufacturing establishment, situated in the United States, in which within 30 days prior to the removal of such product therefrom children under the age of 14 years have been employed or permitted to work, or children between the ages of 14 years and 16 years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of 7 o'clock p. m., or before the hour of 6 o'clock a. m.—

And so on, repeating the same terms as to the ages of the children and as to the hours and conditions of labor that are carried in the House bill.

Mr. President, I advert to this difference at this preliminary stage of my remarks to show one thing, and one thing only, for the present. Under the House bill the specific and particular product of child labor was prohibited from interstate commerce, whereas under the Senate amendment not only the product of child labor—the prohibition of which Senators seek to justify on moral grounds—is prohibited but also any product produced by any man or corporation who does not live up to a rule of civil conduct on this subject laid down by the Congress of the United States. In other words, while the subterfuge was so plain as to be not only demonstrable but demonstrated in the provisions of the House bill, in the Senate bill even subterfuge is disregarded and cast aside; for the Senate amendment not only undertakes to prohibit from entrance into the channels of interstate commerce the products of that labor which you make unlawful by this bill, but we also undertake to prohibit, in equal manner and in exactly the same terms, every other product of a man who violates the rule of civil conduct that we have established in each State of this Republic, through the agency of Congress, because he does not live up to that rule.

Now, let us see what that means. Probably I can make it plainer to the Senate by giving a practical illustration. There are many of these manufacturing establishments that have many different departments. It might be that some of them, we will say for the purpose of illustration, have 20 different departments, and it is easily conceivable that in only one of these departments is child labor as prohibited under the terms of this bill employed; and yet under the terms of the Senate committee's amendment the product of every one of the other 19 departments, in which no child had ever labored, made by a labor upon which no child of any age had ever been employed, would be in equal manner and by the very same identical terms of the proposed statute equally prohibited from entering into interstate commerce.

As I shall point out later, Mr. President, the phraseology of this proposition, both of the House and of the Senate, was taken from the lottery statute; not with respect to the point I raise, however. In the lottery statute it was provided simply that any person who offered to send through the channels of interstate commerce, or, my recollection is, through the Post Office Department, any lottery ticket—confining it strictly and solely to lottery tickets—should be guilty of a penal offense under the statutes of the United States.

To illustrate: Even under the principles of the lottery case, if a man ran a printing shop and printed lottery tickets that were part and parcel of a gambling transaction, under the House bill

on this subject and under the statute that Congress passed and which was upheld by the courts, the only thing you could prohibit from entrance into the channels of interstate commerce was the lottery ticket itself; and if he produced a dozen other kinds of legitimate printing, such other legitimate products of that printing shop could not be denied entrance into the channels of interstate commerce.

Therefore I say this proposition of the Senate committee not only goes far beyond the proposition of the House of Representatives but far beyond the proposition of the Congress and of the Supreme Court in the Lottery case, because there, as in the House bill, nothing was penalized except the immoral thing itself. Nothing was penalized except the particular product of a man's business that was under the ban of the law. Here everything he produces is penalized, lawful and unlawful, even according to the standards you seek to set up in this bill; and if 90 per cent of the employees of a person subject to the provisions of this law were engaged in different departments of manufacture, utterly disconnected with some department in which a few children were employed, you would penalize him and outlaw his whole legitimate product—legitimate even according to the standards you set up in this legislation.

I expect to advert to that matter later during the course of this argument; but I make the prediction here and now, and I measure my words when I make it, that when this matter gets to the Supreme Court of the United States, where it is bound to be settled, in that great forum you will encounter insuperable objection of a constitutional nature in the form of this Senate amendment itself, from the way in which you have mixed in inextricable confusion things that are legitimate and lawful, even under the standard that you now set up, with things that are unlawful according to that standard.

Mr. WORKS. Mr. President——

Mr. HARDWICK. I yield to the Senator from California.

Mr. WORKS. I should like to ask the Senator whether the provision which he is now discussing does not prove beyond any doubt that the object of this legislation is not to prevent interstate commerce in certain products, but to prevent the employment of children within a State?

Mr. HARDWICK. Undoubtedly. As I have just said to the Senate, here all pretense is cast to the four winds of heaven. The House of Representatives did preserve a little pretense, so small that it was almost disgraceful; but here you cast it every bit to the winds, and you have said: "We are not seeking simply to bar the products of child labor from the channels of interstate commerce. We are not seeking to prohibit the product of child labor, and of child labor alone, from entering the channels of interstate commerce, but we are going to fine or put in jail the man who does not live up to the rule of civil conduct that we prescribe for 48 States of this Union by act of Congress on a purely domestic and internal affair."

Mr. President, I do not wish to be misunderstood, so far as my attitude about this bill is concerned. I am as thoroughly, as earnestly, as sincerely in favor of the enactment of just and humane and reasonable laws for the protection of children as any man on either side of this Chamber can possibly be; but because we want a certain kind of a law, does that confer upon the Congress of the United States ny warrant to establish it about a purely domestic and internal affair? The same argument might be applied, the same desire for uniformity might be urged, as to any kind of a civil or criminal statute which we sought to set up throughout the Union and to enforce uniformly and impartially in all the States of the Republic. I favor the most just and the most humane legislation on this subject that enlightened men, with the fear of God and the love of their fellow men in their hearts, can enact. But I say to you in all soberness and in all earnestness that the sole power to enact those laws resides in the legislative authorities of the several States of this Union and not in the Congress of the United States.

I venture the assertion that the great Commonwealth in which I reside has a child-labor law that is better, fairer, more just, more suited to our conditions, and more thoroughly satisfactory to our people than the standard you propose to set up in this bill. I not only am willing to yield to interruptions on that subject, but I invite contradiction, if any Senator on this floor can make it.

Now, I will state what those laws are, and I will leave it to those Senators present to say whether we have not a better law than you propose for the whole United States in this bill.

In our State—I have the act of 1914 before me—the hours of employment are practically the same as those provided in this bill. I will not read it unless some controversy arises about it. They are practically the same as they are in this bill. We have no mines or quarries that amount to anything in our States, so that part of the bill is a negligible, if not an entirely unimportant, matter there. There children are not allowed to work in factories under the age of 14, just as this bill proposes, excepting in two instances; and what are they?—because these two exceptions constitute the difference between the proposed Federal law and the Georgia statute. There children who are under 14 and between the ages of 12 and 14, can work, first, if they are the sole support of a widowed mother. Is not that better than this bill? Up to 14, under the law you propose for the United States, a child, a good, sturdy boy, after he gets to be 12 or 13 years old and before he arrives at the age of 14, is not allowed to toil honestly for the mother that bore him, although she is destitute and would otherwise be an object of charity.

You do not provide anything in this bill for either the child or the mother. If you are not going to let him work, if you are not going to let him support his mother, in the name of God and that humanity which is so often appealed to here, why not carry it out and give his starving mother a crust of bread.

There is one other difference between the Georgia statute and this proposed law. There a child between the age of 12 and 14 years is allowed to work if he is an orphan, if he has no other means of support, and the sole alternative is he must either work or be an object of public charity. In the name of American boys everywhere, not born with silver spoons in their mouths, in the name of the poor boys, would you rather send them to the poorhouse to receive public alms than to let them work and win their bread in honest toil?

I tell you now and here the statute of Georgia is better and wiser and more just and more humane on this great subject that you prate so much about than the law that you propose as a panacea for all these evils.

Mr. President, there are four great groups that support this bill and that give it that enormous political power which we have seen manifested in the other House of Congress and which is soon to make itself manifested on this floor, I am sorry to say. What are these groups? First, the sentimentalists everywhere, people like my good friend from Iowa [Mr. KENYON], and I honor him for his motives. I honor every one of those good men in and out of Congress. I know they mean to do right.

Ah, Mr. President, it is not the first wrong that has been done in this country in the name of a misinformed and misguided humanitarian spirit. My own judgment is that many years ago a spirit like this manifested itself on the great race question, on the slavery question, and swept the public so far from the moorings of reasonable, sober, and calm judgment and of just, well-considered appropriate action that it plunged this country into the most horrible war the world had ever seen up to that time, and drenched our soil in blood. I refer to William Lloyd Garrison, Harriet Beecher Stowe, and people of that kind and type everywhere throughout this Republic, godly men and godly women, I admit. The time has come at last when everywhere in this Republic justice can be done to them and their motives even though we deplore some of their rash and precipitate words and deeds. Ah, if in those days this country could have listened to men of sober, sturdy, well-balanced judgment like our great martyred President, Abraham Lincoln, men of that class and type throughout the country, of all parties and of all sections, we would have been saved a world of trouble.

Now, I have paid my tribute to these humanitarians for their motives. I have the highest respect for their motives, but for their judgment I have very little.

I want to ask them to-day throughout this country, in the United States and out of it, what they propose to do with a child who is the sole support of his widowed mother, when they take from him his opportunity to work; what substitute are they going to give? Are you going to let them both—mother and child—starve, or become objects of public charity? I want to ask people in the United States, and out of it, what they are going to say to the honest, self-respecting orphan boy, 12 or 13 years old, born on Georgia soil, when they say to him, "You shall not work," even if the alternative is public charity? And what is the substitute that you offer?

Senators, I tell you, some of the greatest men this Republic ever produced, in my State and in each one of yours, were boys like that. Are you going to make them inmates of charitable institutions and support them at the expense of the State?

I tell you in the name of American institutions, in the name of individualism in this Republic, it would be better to let them adopt the other plan that our fathers and theirs followed; honest, self-respecting toil is far more elevating than either public or private charity.

Mr. President, there is still another of these great groups that make up the political strength of this movement, to which I now wish to allude. It is union labor. It is hardly necessary for me to say on this floor, and it is certainly entirely unnecessary for me to say to the people of my State, that I was born with no silver spoon in my mouth. I have the greatest sympathy on earth—I yield to no Senator on this floor in that respect—for a man who toils with his hands and earns the bread that God ordained he should earn "in the sweat of his brow." But I do not hesitate to say for one, be the result what it will, I am utterly unwilling to support union labor or its leaders whenever they want something that I know is wrong and will work injury upon my people and upon the Republic. I am willing to stand by them when they are right, but that is as far as they ought to ask anybody to go, and that is as far as any good man ought to go with them, or with anybody else.

Because I sympathize with them so deeply, because I put manhood so far above everything else, I am always willing to give them the benefit of every doubt, where there is a doubt, but the fact is that union labor, North, East, South, and West, has made this measure one of its demands, and we, in this Chamber, are about to register a decree of acquiescence, just as it was registered in the other House of Congress not so many months ago, regardless of the Constitution, regardless of our fundamental principles of Government, regardless of everything else except the votes to be cast in November next.

There is another great factor in the great allied forces that make up the support of this bill. It is commercial rivalry between the manufacturing institutions of the different States and different sections of this Republic. Some of them believe that their competitors in other States have more favorable labor conditions and cheaper labor than they are able to get in their own States. Hence they want this bill to make it uniform, as my friend, the junior Senator from Arkansas [Mr. ROBINSON], asserts.

Now, gentlemen, the complaint in this question is leveled at the southern portion of this Republic. Why I do not know, because on this floor yesterday the Senator who championed this bill, who presented it for the committee, when asked to specify the States that were absolutely deficient in this regard, from his own standpoint, from his own standard, according to his own judgment, named one Southern State, North Carolina, and two Western States, Wyoming and New Mexico.

The reason why the opposition to this legislation comes from the Southern States of this Republic is not because of the suggestion which has been made, and the innuendo indulged in on this floor and elsewhere, that great and powerful manufacturers there are opposed to it. That is not the primary reason, in my judgment.

I know that I do not have to make any such statement, but I am glad to have this opportunity to do so. Not one of those men, in all my life, ever said a word to me upon this subject. After I announced years ago my unalterable opposition to this sort of legislation on constitutional grounds and for reasons that are fundamental, certain gentlemen who have opposed this bill have written to me thanking me for what they called my sound position on this question. Not one of them has sought to influence me or my attitude or my vote on this great question.

The suggestion that a strong, rich, grasping, powerful, insidious lobby is responsible for the opposition to this bill, or for the opposition of individual Senators to this bill, is utterly false, and is beneath the contempt of every honest man.

Talk about lobbyists. I will tell you right now there is a good deal of loose talk in the country on that subject. People have to come here to tell Congress when their interests are affected. When they do it honorably, in a public way, there is no objection to it; on the contrary, there is every reason why they should do so, both to protect themselves from injustice and the Congress from mistakes.

Speaking of lobbyists on this question, I believe that the interests which favor the passage of this bill have maintained for years one of the strongest and most successful lobbies ever maintained in Washington in support of a legislative proposition. Yet I want to say here and now that I do not believe that the gentlemen who constitute that lobby have ever sought to approach any Senator of the United States or any Representative in the Congress of the United States in anything but a perfectly proper and legitimate way, to make legitimate and proper arguments that appealed to them on this question.

Another great force that supports this bill is commercial rivalry between the different States and sections of the country. Ah, gentlemen, it has already done more harm in this great country than any other one solitary force. It came pretty near tearing this Union into discordant and dissevered fragments long before the great Civil War. The chief reason why we had to form this great Constitution of ours was to defend against its selfishness and its greed.

Then there is another great motive power that supports this bill. What is that? It is the intense political rivalry of both the great political parties in their courtship of the Bull Moose or Progressive forces, and an earnest, sustained, headlong purpose to get their votes at almost any price.

This measure is no Democratic doctrine. My brethren, do not fool yourselves about that. If you support it, if you sustain it, if you embrace it, you will be the first Democrats of any important position in all the history of the Republic who ever did so.

My friends on the Republican side, it was not until very recently that you supported it. If you embrace it, if you commit yourselves to it, you will be the first Republicans of respectable position who ever did such a thing.

There is one solitary exception, and that is the distinguished ex-Senator from Indiana, Mr. Beveridge. I sat in a seat on this floor during most of the time of his presentation of this question in 1907, when he announced the startling proposition, astounding and shocking to me, that the Congress of the United States has absolute power—I am sorry my friend from Arkansas, a southern Democrat, seems to agree with him—that Congress has the absolute power to exclude from the channels of interstate commerce in the country any article for any reason whatever that to it seems to be good.

Mr. ROBINSON. Will the Senator yield?

Mr. HARDWICK. Yes.

Mr. ROBINSON. I merely want to say that if the Senator construes my remarks to indicate that I assumed that position he has misinterpreted them——

Mr. HARDWICK. I am glad to have the Senator explain it.

Mr. ROBINSON. And I have been exceedingly unfortunate in not clearly expressing myself, for I know that the Senator from Georgia usually understands the positions of Senators when he hears them discussed.

Mr. HARDWICK. Mr. President, I am delighted to hear the Senator from Arkansas make even that much of a disclaimer I am glad to know that he does not stand where Beveridge stood in 1907, when he stood in his place on this floor and advocated this proposition in almost the words I have stated. He said that it was within the power of the Congress of the United States to exclude from interstate commerce any article or commodity that it pleased for any reason that seemed to it good and sound.

Mr. ROBINSON. If the Senator will permit me, the Senator from Arkansas made no such statement. That question, in my opinion, is not directly involved.

Mr. HARDWICK. Not directly involved?

Mr. ROBINSON. I thought I made clear my position upon that question. I repeated it several times, and if the Senator will permit me I will state it again.

Mr. HARDWICK. All right; I yield.

Mr. ROBINSON. I did assert the power of Congress, through its power to regulate commerce, to legislate in the interest of the health, safety, and morals of the people, but that a police regulation rests in the States.

Mr. HARDWICK. Congress is the judge? I am going to see where your doctrine leads. I do not want to do the Senator an injustice. I do not wonder that he disclaims the impression I have had of his speech; I am glad he has done it; but let us see where his present position leads. Let us see who is the judge.

Mr. ROBINSON. It is a question for final determination by the court.

Mr. HARDWICK. But for Congress primarily.

Mr. ROBINSON. Congress determines first.

Mr. HARDWICK. If the Congress of the United States determined on high moral grounds in order that the people might have sound bodies and good education, to legislate that no article produced by labor employed more than eight hours per day should be admitted to interstate commerce, would that not be within its power if the doctrine advanced by the Senator is sound?

Mr. ROBINSON. I express no opinion on that subject.

Mr. HARDWICK. I do not wonder that you do not.

Mr. ROBINSON. I do not think the cases are analogous at all. I say we recognize the sentiment of the people of the United States that the abuses which exist in child labor by reason of employing children an unreasonable period and at very early ages, and in view of that fact Congress is warranted in using its power to regulate commerce to suppress the evil.

Mr. HARDWICK. Let us see. The able Senator from Arkansas knows as well as I do that many people believe it is

absolutely against public morals, if not criminal, to make honest Americans, home-loving, vote-casting men, work more than eight hours a day?

The time may come, if it has not already arrived, when the Senator from Arkansas, following his proposition of going according to the public sentiment on a question of constitutional power, as he has done in this case, will be bound by the force of irresistible and unanswerable logic to say to these people, "Well, you contend that it is immoral, that it is destructive to health, that it stunts the growth of manhood to require human beings to work over eight hours a day, and therefore the Congress, in the exercise of the power on which child labor rests, will not allow anything that is made by labor employed more than eight hours a day to go through the channels of interstate commerce." When the Senator does that I should like to see him get his cotton shipped out of Arkansas.

Mr. WORKS. Mr. President——

The VICE PRESIDENT. Does the Senator from Georgia yield to the Senator from California?

Mr. HARDWICK. I yield to the Senator from California.

Mr. WORKS. I am anxious to fix in my own mind not only the effect of legislation of this kind, but the intent of it. As I understand the amendment which the Senate committee proposes to the bill, it is not confined to articles that are manufactured partly through child labor?

Mr. HARDWICK. No, sir; it goes much further than that.

Mr. WORKS. Let me illustrate.

Mr. HARDWICK. Very well.

Mr. WORKS. If in one of the mines a boy of 13 years of age should be employed to carry water to men who are working in the mine, that would bring all of the products of that mine within the prohibition of this act?

Mr. HARDWICK. Undoubtedly.

Mr. WORKS. Now, the question in my mind is, if the bill goes to that extent, how it can justly be claimed by Congress that it is legislation to protect interstate commerce.

Mr. HARDWICK. There is no such pretense as that seriously made here.

Mr. WORKS. Or whether it can be construed as having that effect?

Mr. HARDWICK. There is no such claim as that made. I want to read you what the Senator from Arkansas [Mr. ROBINSON] said yesterday was the purpose of this bill, and the Senator from Iowa [Mr. KENYON] said it in express words, and without any qualification of any sort, when he made his speech on February 22, and Members of the other House did not cloak it when they made their speeches in that body on this measure. Yesterday in the part of the speech of the junior Senator from Arkansas, which my friend from California evidently missed, the junior Senator from Arkansas thus described the purpose of this legislation:

> The necessity for any such rule of evidence does not exist if the Senate provision—

He means the Senate committee amendment—

> is agreed to. Moreover, the Senate plan seems simpler than the House plan—

It is a good deal simpler; it is beautiful in its stern simplicity—

> and the more effective to accomplish the end sought—the suppression of child labor through the exercise of the power of Congress to regulate commerce.

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from Georgia yield to the Senator from Idaho?

Mr. HARDWICK. I yield to the Senator from Idaho.

Mr. BORAH. I do not suppose anyone who is undertaking to sustain the bill is undertaking to sustain it upon any other theory than the fact that the Congress of the United States has the power of police regulation under the commerce clause of the Constitution.

Mr. HARDWICK. Does the Senator from Idaho contend that?

Mr. BORAH. Yes; I entertain that view.

Mr. HARDWICK. Well, let me tell the Senator what the answer is, according to my opinion as a lawyer and as a Member of this body, to his contention on that point. The Supreme Court of the United States, under a doctrine built up by some of the latter-day decisions, to which reference has been made on this floor, and to which I intend to refer more at length before I conclude this argument, has, in my judgment, laid down the doctrine that there is, in spite of all that the court had held through all the decades that have gone about the United States and its Congress having no police power, certain police power in respect to the agencies of interstate commerce to preserve and protect them from destroying influences and to make them serve the ends for which they are intended, namely, the service of commerce throughout the country, the carriage of commerce throughout the country.

Mr. BORAH. Mr. President, that seemed to have been the original doctrine when the courts first apparently approached the subject as to what extent the police power could be exercised under the commerce clause of the Constitution; but certainly no one will contend that either the lottery cases or the white slave case could have been sustained upon any theory that it was serving commerce in the economic sense of the term.

Mr. HARDWICK. No; they were sustained on another theory, and later I want to go into the lottery cases more fully, if the Senator will pardon me. I realize the force of the suggestion that he has made. It assaults the very citadel of my position in this matter.

Mr. BORAH. Just a word. I was going to say, in response to the suggestion made by the Senator from Georgia in the way of a criticism of the position of the Senator from Arkansas relative to the eight-hour law, that the Senator from Georgia would not contend that the State in the exercise of its police power could not provide against any other day's labor than that of the eight-hour day, does he?

Mr. HARDWICK. I think not. That is because all the powers not delegated to Congress are reserved to the States, and they have the general power of legislation, except where it is prohibited by constitutional restrictions.

Mr. BORAH. If the State, in the exercise of its police power, may provide for an eight-hour day, and the entire subject matter of interstate commerce has been transferred to the National Government, and it can exercise all the police power that can be exercised in regard to the subject matter, may it not do the same thing with reference to intrastate matters?

Mr. HARDWICK. No, it may not; and it may not for the reason that the power of Congress under the commerce clause does not stand by itself and alone, but it stands with several other constitutional powers, and must be construed in pari materia with all of them.

Mr. BORAH. Mr. President——

Mr. HARDWICK. Let me state to the Senator that I am going into that fully, but I have not yet gotten to that branch of my discussion; and if the Senator will just repeat his question later, I will yield to him, and I shall be glad to discuss that matter with him in detail.

Mr. BORAH. I am very sorry to break in on the Senator's very able argument.

Mr. WORKS. Mr. President, I am probably anticipating what the Senator from Georgia will eventually cover, but I have an open and inquiring mind on this subject, and I am wondering, under the statement made by the Senator from Idaho [Mr. BORAH], if this legislation is to be justified on the ground that it is within the police powers of the Government, whether the Government of the United States has the right to execute and enforce its police powers wholly within a State without affecting labor within a State, in which other States, except in a general way—a humanitarian way—have no interest whatever.

Mr. HARDWICK. The Senator from California has given the very gist of the answer that I am about to make, except that I expect to elaborate it and to make one or two other suggestions along that line and similar lines when I come to that part of my argument; but the Senator is right. I will anticipate so far as to say that if the police power with respect to transportation, while the articles are in transit, or if the police power were exercised so as to protect the State from the injurious effects of the consumption of an unsound or unlawful kind of article which the States themselves had no power to protect themselves against, then the result would be very different; but there is no such contention as that in this instance—the pending bill goes far beyond that.

I said just now that we were coquetting—all of us—with the Bull Moose vote on this question, and that is the plain, literal, unvarnished truth. There is not a Senator within the sound of my voice who does not know it or who will dare deny it. We are playing fast and loose with the Constitution of the United States, with our oaths to support it, with the American system of government, with the reserved powers of the States, with the rights of the people, in a mad effort to get a political advantage.

This bill is not Democratic doctrine. Shades of Jefferson, of Madison, of Jackson, and of Cleveland, no! It is not Republican doctrine. Why, the last Republican President of the United States denounced it in as strong words as Jefferson employed about this sort of business. The doctrine came from a seat in the middle aisle on the Republican side of this Chamber,

from the then junior Senator from the great State of Indiana, Mr. Beveridge.

Mr. BRANDEGEE. Does the Senator want to read what President Taft said about it?

Mr. HARDWICK. Yes; I will be glad to do so if the Senator will give it to me.

Mr. BORAH. Mr. President, before the Senator reads what ex-President Taft said, it must be borne in mind that at the time the then Senator from Indiana announced that doctrine he was one of the leaders of the Republican Party.

Mr. HARDWICK. Yes; and let me tell you something. I call to the witness chair the distinguished Senator from New Hampshire [Mr. GALLINGER], the ranking Senator on the other side, and your floor leader, who said the other day publicly that when the Senator from Indiana proclaimed this doctrine from his seat on this floor every lawyer in this body on both sides of the Chamber who had any position whatever at the bar agreed that it was unconstitutional. At this point, because I have been talking a little about what other people have said, I will ask that the Secretary be allowed to read what former President Taft said about this proposed legislation.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the Secretary will read as requested.

The Secretary read as follows:

Bills have been urged upon Congress to forbid interstate commerce in goods made by child labor. Such proposed legislation has failed chiefly because it was thought beyond the Federal power. The distinction between the power exercised in enacting the pure-food bill and that which would have been necessary in the case of the child-labor bill is that Congress in the former is only preventing interstate commerce from being a vehicle for conveyance of something which would be injurious to people at its destination, and it might properly decline to permit the use of interstate commerce for that detrimental result. In the latter case Congress would be using its regulative power of interstate commerce not to effect any result of interstate commerce. Articles made by child labor are presumably as good and useful as articles made by adults. The proposed law is to be enforced to discourage the making of articles by child labor in the State from which the articles are shipped. In other wirds, it seeks indirectly and by duress to compel the State to pass a certain kind of legislation that is completely within their discretion to enact or not. Child labor in the State of the shipment has no legitimate or germane relation to the interstate commerce of which the goods thus made are to form a part, to its character, or to its effect. Such an attempt of Congress to use its power of regulating such commerce to suppress the use of child labor in the State of shipment would be a clear usurpation of that State's rights. (From former President Taft's book entitled "Popular Government," pp. 142, 143.)

Mr. HARDWICK. Mr. President, the last presidential election in which we participated, and which we won, was in 1912. We are now about to go into another one, which I hope we may also win, but that is prophecy, and not history.

Mr. BORAH. And very dangerous prophecy.

Mr. HARDWICK. I do not know about that. It looks to me as if we have been gaining on you recently, as nearly as I can guess about it. When we went into that great fight, here was the banner that we raised aloft to the American people on this subject; there was not a word about child labor; but we said this:

Believing that the most efficient results under our system of government are to be attained by the full exercise by the States of their reserved sovereign powers—

Why that sounds now almost like a "rebel" contention, does it not?—

we denounce as usurpation the efforts of our opponents to deprive the States of any of the rights reserved to them and to enlarge and magnify by indirection the powers of the Federal Government.

I call the attention of my friend from Arkansas to that.

Mr. JONES. There is not anything in the platform of 1916 on that great question?

Mr. HARDWICK. No.

Mr. THOMAS. Mr. President, if the Senator will permit me.

Mr. HARDWICK. No; I will not permit the Senator at this time, because I am going to put in what the Senator has in mind in my own time and in my own way.

Mr. THOMAS. I was simply going to call attention to both platforms.

Mr. HARDWICK. Yes; in our last platform we have abandoned fundamental doctrine, as the Senator from Colorado knows, and we have done so to please union labor and to coquette with the Bull Moose. They were so anxious to pass this bill that I regret to say the chairman of my own party issued a statement not long ago giving the position of the Democratic Party on child-labor legislation as one of the reasons, among seven or eight others, why the Bull Moose Party in a body ought to vote for the Democratic candidates. I do not want any such votes on any such reasons, so far as I am concerned.

Mr. WORKS. Mr. President——

Mr. HARDWICK. Will the Senator pardon me a moment?

Mr. WORKS. I merely desire to interrupt the Senator upon this very matter. I have been attempting to defend the Southern States against the encroachments of the National Government pretty nearly ever since I have been here.

Mr. HARDWICK. I think the Senator has been always sound in his views on this question, so far as I have known.

Mr. WORKS. They have been absolutely giving away, selling their rights, for money to come out of the National Treasury.

Mr. HARDWICK. Yes, sir; they have sometimes, I am ashamed to say, sold their birthright for a mess of pottage; and most often they did not get the pottage, and threw away the birthright besides. You can not shake your "gory locks at me," for I have not done it. I am not assuming any special virtue over and above my colleagues; but somehow or other I am so built that on fundamentals at least I can not yield; somehow or other I can not help but believe that a political party that is great enough to endure and that deserves to live has to have some fundamental principles in which it believes and to which it is loyal. I was born politically fighting Populism, which was about the same thing as Bull Moosism, subtreasuryism, and all sorts of socialism and paternalism; and I can not get it out of my system. I do not reckon that I ever will until I die. Perhaps when we get to heaven there will be one great, big, beneficent socialism that will work all right. I do not know how it will be elsewhere.

Mr. THOMAS. I am afraid the Senator will never get there. [Laughter.]

Mr. HARDWICK. I have as good a chance as has the Senator from Colorado, I expect.

Mr. THOMAS. A better chance.

Mr. HARDWICK. It is a delicate question to raise in this body, however, and I hope no Senator will pursue it.

Now, let us see. As I have shown, this legislation is not Democratic doctrine. Have you on the Republican side anything at all about it in your platform? In a rather hasty search through your platform I can not find a word about child labor. Did you beg for it and plead for it and promise it in 1912? Did you talk about the poor children who were so abused in 1912? My belief is, without a careful and accurate investigation, that you were so busy fighting each other and were so mad with the other wing of your party that you would not indorse anything in any form in which they believed.

Mr. BORAH. Mr. President, one wing of the Republican Party was for it in 1912.

Mr. HARDWICK. One wing! I thought they were a distinct and separate party; that is, up until recently, and I am not sure but that they are yet.

Mr. THOMAS. They are a broken wing now.

Mr. HARDWICK. As my friend from Colorado aptly suggests, they seem to be a broken wing now. There was a platform, however, that did speak for it, and spoke for it in tones of thunder. I have not got it right at hand, because I have lost the reference, but it is in here. I refer to the Progressive platform; and they demanded this legislation in plain, unmistakable terms.

In 1916 the deluge was over. In 1916 Roosevelt, the unconquerable, the unyielding, was as gentle in his dealings with the Republican Party as a bashful maiden when she faces her first lover, and the mutual concessions were in order, and one of them was a yielding of the Republican position with respect to child labor.

Now, I do not blame you, from the standpoint of practical politics, from trying to get back these fellows, if you can without sacrificing your principles; and I do not blame my party for getting as many of them, or of every other kind of American votes, as we can get, provided we do not give up the citadel of Democratic principles in an effort to get them. I am not willing to do that. I will do anything else on earth that is honorable and fair to induce those men or any other American voters to support the Democratic Party; but I can not, in order to get their support, surrender the doctrines of this great party as they have been preached by every leader it has ever had from Thomas Jefferson to Woodrow Wilson.

Here is what the Progressives said in 1916:

A nation to survive must stand for the principles of social and industrial justice.

This is from their Chicago platform of this year. Well, does that mean a Social Labor Party? Is that what it means? It is not the American system. It is not representative government. It is not our dual form of government—social and industrial justice in a broad, general way. There is no surer, no safer, no sounder way, no more certain plan of securing permanent social and industrial justice, than allowing the great functions of this dual government to operate unimpeded and unimpaired, by sapping some of them of their vitality, because the people of each locality know what is best to promote social

and industrial justice among themselves. Local self-government and home rule will take care of that.

The Progressive platform of 1916 continues:

We have no right to expect continued loyalty from an oppressed class. We must remove the artificial causes of the high cost of living; prevent the exploitation of men, women, and children in industry by extension of the workmen's compensation law to the full limit permitted under the Constitution, and by a thoroughgoing child-labor law.

Now, there you are. While they were doing that our Republican friends were saying "Me, too," over in another part of Chicago; and, bless goodness, when we got down to St. Louis the party that I love made the unfortunate mistake of doing the same thing. Now, that is what the Senator from Colorado wants to say, I reckon. Yes; we did it. I am not proud of it; I am ashamed of it. I am not going to mince words about this thing. But we did it; and I say very frankly that I am so loyal a party man that if I did not believe that the thing was absolutely unconstitutional I might commit the egregious mistake of voting for it myself. But, of course, I swore down there at the Vice President's desk to support the Constitution of the United States and not a party platform; and I am bound to support the Constitution of the United States as I believe it is—yea, Senators, as I know it is—or be forsworn.

I thoroughly believe in this dual system of Government of ours. It has stood the test of time. It secures to us the great principle, ever dear to the Anglo-Saxon heart, of personal liberty, home rule, local self-government, as well as strong, centralized power for foreign relations and for things that are really Federal or national.

I wanted to read you Mr. Madison's estimate of this Constitution. Why, in these days it is not considered popular sometimes even to express a doubt about what the Constitution means or to be opposed to anything because the Constitution may be against it. It is considered a mere subterfuge among some thoughtless and ill-advised people for opposition to this bill or that bill or the other. I tell you Senators, no more dangerous sentiment can be encouraged or permitted to exist generally among the people of this Republic than a belief that their organic law amounts to nothing when it stands in the way of their whims and their temporary desires.

In a letter to R. H. Lee, of Virginia, then President of the Continental Congress, dated in New York, 1784, on the general subject of the labors of the convention that framed the Federal Constitution, Mr. Madison concluded his observations in this way:

But whatever may be the judgment pronounced on the competency of the architects of the Constitution or whatever may be the destiny of the edifice prepared by them, I feel it a duty to express my profound and solemn conviction, derived from my intimate opportunity of observing and appreciating the views of the convention, collectively and individually, that there never was an assemblage of men charged with a great and arduous trust who were more pure in their motives or more exclusively or anxiously devoted to the object committed to them than were the members of the Federal convention of 1787, to the object of devising and proposing a constitutional system which should best supply the defects of that which it was to replace and best secure the permanent liberty and happiness of their country.

It was a just appraisal of the work of the great men who wrote that great instrument which stands as the model for all free representative Governments on the face of this earth to-day; and yet we sneer at it, and if a man says he can not support this bill or that bill or the other bill because the Constitution will not allow it he is considered old-fashioned, an old fogy, and out of date. Ah, Senators, I beg you, I pray you, to halt! If this continues and increases, the Republic can not live.

Mr. President, in 1798 the famous Kentucky resolutions, drawn by Thomas Jefferson's own hand—the original of those resolutions found in his own handwriting, establishes the authorship which is unchallenged and undenied—read as follows. I will read just the first of the resolutions:

Resolved, That the several States composing the United States of America are not united on the principle of unlimited submission to their General Government—

Subsequently, that has been changed by the stern edict of war—

but that by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this compact each State acceded as a State, and is an integral party, its co-States forming, as to itself, the other party; that the Government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers.

I am afraid that that is what has happened, and that is the reason why I read this resolution—to call attention to that particular expression, that if this Government, as Mr. Jefferson said in the Kentucky resolutions, were constituted the final judge of what its powers should be, the danger was that the Federal Government would make its own desires the measure of its powers, and not the written Constitution of our fathers.

Mr. BORAH. Mr. President, the Senator will not contend that the National Government is not the judge of its own powers under the Constitution, will he?

Mr. HARDWICK. I do not. I said just now that that had been forever settled. But I think—to use the language of a great Senator from my own State, to whom I am going to refer in just a moment more at length on this question—"cowardice can take no meaner form than when power oppresses weakness"; and that for this Government, because it has the power, because it can do it, and there is no way for people to help it, to usurp powers and rights that do not belong to it, that were never delegated to it, that can not be fairly implied from any of the delegated powers, is as mean and cowardly a thing as any Government on the face of this earth could do, and as dangerous a thing, as utterly destructive of the Government itself, as could possibly be done.

Now, let us see. In a letter to Gideon Granger, dated Monticello, August 18, 1800, Mr. Jefferson said this:

DEAR SIR: I received with great pleasure your favor of June the 4th, and am much comforted by the appearance of a change of opinion in your State; for though we may obtain, and I believe shall obtain, a majority in the Legislature of the United States, attached to the preservation of the Federal Constitution according to its obvious principles, and those on which it was known to be received; attached equally to the preservation to the States of those rights unquestionably remaining with them; friends to the freedom of religion, freedom of the press, trial by jury, and to economical government; opposed to standing armies, paper systems, war, and all connection, other than commerce, with any foreign nation; in short, a majority firm in all those principles which we have espoused and the Federalists have opposed uniformly; still, should the whole body of New England continue in opposition to these principles of government, either knowingly or through delusion, our Government will be a very uneasy one. It can never be harmonious and solid while so respectable a portion of its citizens support principles which go directly to a change of the Federal Constitution, to sink the State governments, consolidate them into one, and to monarchize that. Our country is too large to have all its affairs directed by a single government.

That is what I am pointing out now. I want to interpolate, if Senators will note, that staying here month in and month out, almost year in and year out, we are hardly able to get through the Federal business with some reasonable confinement to Federal limitations of the business we assume to transact. But if, in addition to that, as is proposed by the principle in this bill—because it is the entering wedge for it all—we are to enter into the control and determination of local legislation in each one of the 48 States of the American Republic, I tell you we will have not time to do it, and we will have no information upon which to act intelligently. We will not be able, either in point of time or in point of accurate and reliable information, to perform the function that we will thus usurp.

Mr. WORKS. Mr. President, the Senator is complaining about usurpation on the part of the National Government. I wonder how fully he realizes the fact that the most of this is being done by representatives of the States themselves by way of legislation?

Mr. HARDWICK. Well, does the Senator know why? I will give the Senator my idea. In the first place, they tempt themselves and their constituencies with appropriations, as was suggested just now. In the second place, if they want to accomplish some temporary reform that seems to be so important, just like this, so necessary, so just, so humane, for the moment they sacrifice all considerations of governmental principle, and proceed to do it without delay and without regard to anything else except the object immediately in hand. I am afraid that that is the truth. I have been here in both Houses of Congress some 15 or 16 years, and that is my observation. I have a great respect and a great affection for Members of both bodies, and yet I think that that is the trouble. I do not know what the Senator's opinion is, but I think his long experience might probably lead him to concur with me.

Mr. Jefferson, in his letter to Lee, continues:

Public servants, at such a distance and from under the eye of their constituents, must, from the circumstance of distance, be unable to administer and overlook all the details necessary for the good government of the citizens, and the same circumstance, by rendering detection impossible to their constituents, will invite the public agents to corruption, plunder, and waste. And I do verily believe that if the principle were to prevail of a common law being in force in the United States (which principle possessed the General Government at once of all the powers of the State governments and reduces us to a single consolidated Government) it would become the most corrupt government on the earth.

Mr. DILLINGHAM. Will the Senator give us the date of that letter?

Mr. HARDWICK. August 13, 1800.

Mr. DILLINGHAM. How many States were there in the Union at that time?

Mr. HARDWICK. I suppose there were something like 15 or 16. I do not remember exactly how many had been admitted by that time.

Again, I read from Mr. Jefferson's correspondence, in his letter to Mr. M. Destutt Tracy, dated Monticello, January 26, 1811, more than 11 years after the other one was written, when his mind was more mature and his experience larger. Here is what he said. There were 17 States then:

But the true barriers of our liberty in this country are our State governments; and the wisest conservative power ever contrived by man, is that of which our Revolution and present Government found us possessed. Seventeen distinct States, amalgamated into one as to their foreign concerns, but single and independent as to their internal administration, regularly organized with legislature and governor resting on the choice of the people, and enlightened by a free press, can never be so fascinated by the arts of one man as to submit voluntarily to his usurpation. Nor can they be constrained to it by any force he can possess. While that may paralyze the single State in which it happens to be encamped, 16 others, spread over a country of 2,000 miles diameter, rise up on every side, ready organized for deliberation by a constitutional legislature, and for action by their governor, constitutionally the commander of the militia of the State; that is to say, of every man in it able to bear arms; and that militia, too, regularly formed into regiments and battalions, into Infantry, Cavalry, and Artillery, trained under officers general and subordinate, legally appointed, always in readiness, and to whom they are already in habits of obedience. The republican Government of France was lost without a struggle because the party of "un et indivisible" had prevailed; no provincial organizations existed to which the people might rally under authority of the laws, the seats of the directory were virtually vacant, and a small force sufficed to turn the legislature out of their chamber and to salute its leader chief of the nation. But with us, 16 out of 17 States rising in mass, under regular organization and legal commanders, united in object and action by their Congress, or, if that be in duress, by a special convention present such obstacles to an usurper as forever to stifle ambition in the first conception of that object.

Dangers of another kind might more reasonably be apprehended from this perfect and distinct organization, civil and military, of the States, to wit, that certain States from local and occasional discontents might attempt to secede from the Union. This is certainly possible, and would be befriended by this regular organization. But it is not probable that local discontents can spread to such an extent as to be able to face the sound parts of so extensive a Union; and if they should reach the majority they would then become the Regular Government, acquire the ascendency in Congress, and be able to redress their own grievances by laws peaceably and constitutionally passed. And even the States in which local discontents might engender a commencement of fermentation would be paralyzed and self-checked by that very division into parties into which we have fallen, into which all States must fall wherein men are at liberty to think, speak, and act freely, according to the diversities of their individual conformations, and which are, perhaps, essential to preserve the purity of the government, by the censorship which these parties habitually exercise over each other.

You will read, I am sure, with indulgence, the explanations of the grounds on which I have ventured to form an opinion differing from yours. They prove my respect for your judgment, and diffidence in my own, which have forbidden me to retain, without examination, an opinion questioned by you. Permit me now to render my portion of the general debt of gratitude by acknowledgments in advance for the singular benefaction which is the subject of this letter, to tender my wishes for the continuance of a life so usefully employed, and to add the assurances of my perfect esteem and respect.

Mr. President and Senators, the most brilliant figure that ever represented on this floor and in this Chamber the great Commonwealth from which I come was Benjamin Harvey Hill—the dashing Rupert of short-arm debate, the invincible Achilles of prepared and sustained controversial discussion. A son of Georgia and of the South, who loved them both with an almost idolatrous devotion; he was also a great, broad-minded, broad-gauged American patriot, whose mighty vision swept to the farthest corners of this country, and whose mighty love embraced all her people. Just at this juncture my mind turns naturally to him, for of all the American statesmen of his time he had the truest concept of our great dual system of government, of Federal power, and of the rights and powers of the States; and he expressed his views on that subject with a clarity that never has been equaled, and with an eloquence that rarely has been excelled.

In a speech made by this great American, in the days when reconstruction was hardly over, to the people of my State, my recollection is in 1876, Mr. Hill said what I shall read:

There are two great essential features of this great system, without either of which the whole system would fail, and I shall briefly call your attention to these two essential features. Every man in America ought to understand them and be able to give a reason why the American Union is a great system of government and why this system, represented by that flag floating above us, ought to be dear to every American citizen. The first essential feature of this American system is this: That there shall be a general government for general affairs and a local government for local affairs. That is the first underlying fundamental and indispensable principle of the American system of government. It was a happy thought. There are certain affairs which are general to all the people of this country equally. If you did not have one general government clothed with jurisdiction to manage those general affairs, each State would have to manage them for herself. That would multiply the expense and dangers of our foreign affairs thirty-eight times; that would multiply our standing armies thirty-eight times; that would multiply all the machinery of general government thirty-eight times—

Since there were 38 States when he spoke—

that would line the borders of 38 States with customhouse and foreign regulations and military fortifications. To avoid such burdens, our fathers provided one General Government to take charge of all the affairs that were general and common to all the States alike, leaving each State to manage its own local affairs in its own way.

Why? Because each State would be the best judge of what local laws suited its own people—

Ah, gentlemen, how different is this situation.

Why? Because each State would be the best judge of what local laws suited its own people, better than any foreign States, and better than any government representing a great number of States. So that, I repeat, the first great leading idea and fundamental feature in this American system of government is a general government for general affairs and local or State governments for local or State affairs.

Listen to another striking phrase from this great man. Remember he was speaking in 1876:

Who, then, I repeat, is a disunionist? The man who strikes at the Federal Government is a disunionist, because he strikes at an essential feature of the system which makes the American Union. But the man who strikes at the State government is also a disunionist, because he strikes at an equally essential feature of the same system. He alone is a perfect Union man who is faithful to the whole system—to both the General Government and the State Government, each in its sphere. Blot out the stars from that flag and you have no American flag; blot out the States from this Union and you have no American Union. Cripple the States and you cripple the Union. Invade the States and you invade the Union. Make war on the States and you are a traitor making war on the Union.

Senators, I think that is probably the most eloquent language in all American political literature. I invite the attention of the Senate to this speech. It is most interesting. He concludes his speech in this way:

My countrymen, have you studied this wonderful American system of free government? Have you compared it with former systems and noted how our forefathers sought to avoid their defects? Let me commend this study to every American citizen to-day. To him who loves liberty it is more enchanting than romance, more bewitching than love, and more elevating than any other science. Our fathers adopted this plan, with improvements in the details, which can not be found in any other system. With what a noble impulse of patriotism they came together from different States and joined their counsels to perfect this system, thenceforward to be known as the "American system of free constitutional government!" The snows that fall on Mount Washington are not purer than the motives which begot it. The fresh dew-laden zephyrs from the orange groves of the South are not sweeter than the hopes its advent inspired. The flight of our own symbolic eagle, though he blow his breath on the sun, can not be higher than its expected destiny. Have the motives which so inspired our fathers become all corrupt in their children? Are the hopes that sustained them all poisoned to us? Is that high expected destiny all eclipsed, and before its noon?

Senators, no greater American, no more brilliant orator and no truer patriot ever lived in the great State of Georgia or in this country. I would that his almost inspired words could guide us in this matter. I can see him sitting in the seat I now occupy by a favor of my people far beyond my poor deserts, and I know that the vote I am going to cast will be the vote that Benjamin Harvey Hill would have cast on this great question.

It would not do to quote entirely from southern patriots, from southern statesmen, from great Democrats. I do not know the politics of the man I am going to quote next from, but I do know that he is regarded throughout this Republic as probably the greatest constitutional lawyer and the greatest authority on constitutional law who has ever lived in this country. I think he was a Michigan man.

Mr. TOWNSEND. Judge Cooley, of Michigan?

Mr. HARDWICK. Before I leave Senator Hill I want to say one thing to the Senate, and really that was one of the chief reasons, although I am devotedly attached to his memory, that I made such extended reference to his writing and speeches on this great subject.

Senator Hill was elected to this body in 1877 and died on August 16, I think, 1882, just before the expiration of his first term, while he was the idol of his State and the cynosure of every eye in the Nation. Former Senator Bailey told me within a week—and I have his permission to make reference to it in this public way or, of course, I would not do it—while Senator Hill was in the very heyday of his brilliant career and he, Bailey, was a young man he came to Washington just before Hill's death. It was almost Mr. Bailey's first appearance here I do not think he was in public life at that time, but he had had many interesting conversations with Senator Hill. It seems that Senator Hill was a distant relation of his. Finally on one occasion he said to Senator Hill, "Senator, I want to ask you a question, if I may do so without being presumptuous." Senator Hill said to him in that kindly way he had, especially with young men, "There will be no presumption about it, my boy. Ask your question." He said, "Senator Hill, I recall that prior to the Civil War you began your political career in Georgia as a Whig. You were elected to the Legislature of Georgia as a Whig, and after that party went to pieces in the wreck of the Kansas-Nebraska decision and the slavery trouble you practically organized in your State the Know Nothing Party and became its candidate for governor of Georgia, and in a momentous and hotly contested and close election you were beaten by a very small majority in a great Democratic State." He said, "Since the war you have been a thorough Democrat in

every respect, devoted to its principles and true to its teachings. I want to know why it is that prior to the Civil War you were everything else but a Democrat, and since the Civil War you seem to be so splendidly versed in Democratic principles and so ardent and loyal in that faith." Hill replied—and it is the key, Senators, to his whole political career—"My son, prior to the Civil War I realized that if the Union was ever endangered at all it would be from its centrifugal forces, that the States were too powerful, and that their powers were augmented too often at the expense of the General Government, and if disunion and disaster ever overtook us it would come from those centrifugal forces. Since the Civil War," he said, "the exact reverse has been true. The danger to the American system of government, the danger to our institutions, comes now and will come for a long period of years from the centripetal forces in this Republic. They are becoming too powerful; they are encroaching on those rights and powers of the State; they are constantly encroaching upon the functions of the States; they are constantly usurping the different functions of local government."

Senators, it was a wonderful answer and it gave the keynote to the political career of a great American statesman.

Mr. TOWNSEND. The Senator a moment ago referred to Judge Cooley. May I say just a word on that subject?

Mr. HARDWICK. Yes; I yield to the Senator with pleasure.

Mr. TOWNSEND. Mr. Cooley was at one time chief justice of the State of Michigan. There were the big three, as they were known, Cooley, Christiancy, and Campbell; and I think their decisions were more generally quoted and have been throughout the United States as authority than any other court in any other State in the Union. He was also on the Interstate Commerce Commission. He was one of the first commissioners appointed to that body.

Mr. HARDWICK. To the very just and deserved tribute of the Senator from Michigan I want to add, and I think every lawyer in this body will agree with me, that his work on constitutional law remains to this day the standard work on that subject in this country, in my judgment. I read from Cooley on Constitutional Law, pages 29 and 30, third edition. Judge Cooley says:

> The government created by the Constitution is one of limited and enumerated powers, and the Constitution is the measure and the test of the powers conferred. Whatever is not conferred is withheld and belongs to the several States or to the people thereof. As a constitutional principle this must result from a consideration of the circumstances under which the Constitution was formed. The States were in existence before and possessed and exercised nearly all the powers of sovereignty. The Union was in existence, but the Congress which represented it possessed a few powers only, conceded to it by the States, and these circumscribed and hampered in a manner to render them of little value. The States were thus repositories of sovereign powers, and wielded them as being theirs of inherent right; the Union possessed but few powers, enumerated, limited, and hampered, and these belonged to it by compact and concession. In a confederation thus organized, if a power could be in dispute between the States and the confederacy, the presumption must favor the States. But it was not within the intent of those who formed the Constitution to revolutionize the States, to overturn the presumptions that supported their authority, or to create a new government with uncertain and undefined powers. The purpose, on the contrary, was to perpetuate the States in their integrity and to strengthen the Union in order that they might be perpetuated. To this end the grant of powers to the confederacy needed to be enlarged and extended, the machinery of government to be added to and perfected, the people to be made parties to the charter of government, and the sanction of law and judicial authority to be given to the legitimate acts of the Government in any and all of its departments. But when this had been done, it remained true that the Union possessed the powers conferred upon it, and that these were to be found enumerated in the instrument of government under which it was formed. But lest there might be any possible question of this in the minds of those wielding any portion of this authority, it was declared by the tenth article of the amendments that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

I want to say, Senators, that later, in another part of this discussion, I will read an extract from Judge Cooley squarely on this proposition of child-labor legislation, and against it.

Mr. BORAH. Mr. President, does not the Senator think that Judge Cooley clearly laid down the doctrine that the National Government has the power of police regulation with reference to interstate commerce?

Mr. HARDWICK. No, sir; except in the limited way the Senator and I were discussing it this morning. I think he clearly drew that line. If I am in error, I hope the Senator will later call attention to it.

Mr. BORAH. I will not interrupt the Senator now; but I have a reference to Judge Cooley to that effect.

Mr. HARDWICK. I think you will find that he drew the same line I attempted to draw this morning, unless my memory is very inaccurate on that point. I have not examined his work on that particular question recently, but I feel sure my memory is accurate.

Now, I am going to quote from another authority—not a great lawyer, although the gentleman who wrote it was bred to the law, but a great statesman, a great public man, a great President, a man of wonderful intellectuality. In all my life I have come in contact with but few men who, in my judgment, in any way approached him in intellectuality. I refer to the President of the United States. Senators on both sides know that my tribute to him is absolutely beyond all challenge. Not even the exigency of party conflict or the heat of partisan rancor can induce any Senator of the United States to deny that proposition, whether he be Democrat or Republican.

Before Mr. Wilson was President of the United States he was president of one of the three or four greatest American universities, and it was while he was serving in that capacity that the wonderful clearness of his views, the wonderful vigor of his intellect, and the wonderful soundness of his opinions attracted my attention and challenged my enthusiastic admiration.

I am going to read now some of the views of the present President of the United States—in accordance with Jefferson's views, with Madison's views, with Hill's views, with all the great Democrats alive and dead—on this question of local self-government and the rights and powers and responsibilities and duties of the States. Referring to this struggle between State and Federal power, in his book on constitutional law, to which the Senator from Idaho made passing reference the other day, there is a great deal in this book on this question. It is a print of these lectures that were delivered to the Princeton students.

Mr. OVERMAN. What is the date?

Mr. HARDWICK. Nineteen hundred and seven. The lectures, I think, were delivered in 1906. I remember when they were printed. I used to read such portions of them as were printed with great admiration, as I do yet. Now, discussing this trouble, this constant conflict between State and Federal power and authority that seems to inhere in our dual system of government, from which there seems to be little escape, I want to read you what President Wilson said:

> And now the question has come upon us anew. It is no longer sectional, but it is all the more subtle and intricate, all the less obvious and tangible in its elements, on that account. It involves, first or last, the whole economic movement of the age, and necessitates an analysis which has not yet been even seriously attempted. Which parts of the many-sided processes of the Nation's economic development shall be left to the regulation of the States, which parts shall be given over to the regulation of the Federal Government? I do not propound this as a mere question of choice, a mere question of statesmanship, but also as a question, a very fundamental question, of constitutional law. What, reading our Constitution in its true spirit, neither sticking in its letter nor yet forcing it arbitrarily to mean what we wish it to mean, shall be the answer of our generation, pressed upon by gigantic economic problems, the solution of which may involve not only the prosperity but also the very integrity of the Nation, to the old question of the distribution of powers between Congress and the States? For us, as for previous generations, it is a deeply critical question. The very stuff of all our political principles, of all our political experience, is involved in it. In this all too indistinctly marked field of right choice our statesmanship shall achieve new triumphs or come to calamitous shipwreck.
>
> The old theory of the sovereignty of the States, which used so to engage our passions, has lost its vitality. The war between the States established at least this principle, that the Federal Government is, through its courts, the final judge of its own powers. Since that stern arbitrament it would be idle, in any practical argument, to ask by what law of abstract principle the Federal Government is bound and restrained.

Now, I am quoting from something the Senator from Idaho quoted in part the other day. He began right here:

> Mr. Wilson continues:
>
> "Its power is 'to regulate commerce between the States,' and the attempts now made during every session of Congress to carry the implications of that power"—

I commend this to my distinguished friend from Arkansas, the junior Senator—

> "and the attempts now made during every session of Congress to carry the implications of that power beyond the utmost boundaries of reasonable and honest inference show that the only limits likely to be observed by politicians"—

Of course, I do not think he was referring to the Senator from Arkansas—

> "are those set by the good sense and conservative temper of the country.
>
> "The proposed Federal legislation with regard to the regulation of child labor affords a striking example. If the power to regulate commerce between the States can be stretched to include the regulation of labor in mills and factories, it can be made to embrace every particular of the industrial organization and action of the country. The only limitations Congress would observe, should the Supreme Court assent to such obviously absurd extravagances of interpretation, would be the limitations of opinion and of circumstance."

That is what you are doing. You are stretching; you, a southern Democrat.

Mr. ROBINSON. I do not think so.

Mr. HARDWICK. I am just telling you what the President thinks.

Mr. ROBINSON. What the President used to think. You are not telling what he thinks.

Mr. HARDWICK. Has the President changed his mind about this?

Mr. ROBINSON. Certainly. The President is advocating this bill.

Mr. HARDWICK. Surely the Senator must be mistaken about that. I can not credit it.

Mr. ROBINSON. Then I am unable to enlighten the Senator.

Mr. HARDWICK. Of course I think the Senator must have misunderstood him.

Mr. THOMPSON. Will the Senator from Georgia yield to me for a moment?

Mr. HARDWICK. I yield to the Senator.

Mr. THOMPSON. That was before the decision of the Supreme Court on this question.

Mr. HARDWICK. The President has not been a practicing lawyer. He did not base any of this sound doctrine on any decision.

Mr. THOMPSON. But a great many of us have changed our minds since the Supreme Court has decided the question.

Mr. HARDWICK. I will discuss the decisions a little later. Of course the Senator may be right. Wise men change their minds very often, but I have yet to see any reason upon which any alleged change of mind upon the part of the President is based or upon which it rests. I confess I should like to see it as a matter of curiosity. I should like the Senator, as long as he is now about it, to give us the reasons for it if he can.

Mr. ROBINSON. Will the Senator yield to me for an interruption?

Mr. HARDWICK. Certainly. My remarks do not apply to the Senator any more than to any other Senator.

Mr. ROBINSON. I understand that. I am not taking it any more seriously than the Senator from Georgia intended it; but I had assumed, of course, that the Senator from Georgia knew that the President had expressed his friendliness to this legislation. If that information has not reached the Senator from Georgia, then I will admit that he seems to be living in the past.

Mr. HARDWICK. The Senator from Georgia would rather live in the past in some respects than in the present.

Mr. ROBINSON. The Senator from Georgia would adorn any age in which he lived.

Mr. HARDWICK. I thank the Senator very much. I am rather old-fashioned. I do not believe in these radical changes about fundamental principles overnight, and I am not going to indorse them. I do not care who changes; the Senator from Arkansas can do just as he likes. Of course, I saw it printed in the papers that the President came up here and told us—he did not tell me, of course; he told some of us—that this legislation must pass, and pass at this session. Well, he may have done it. I do not know. The newspapers are not always accurate. I do not know whether he did or not, but if he did I imagine he came with crape on his hat. If he did, I imagine he came in mourning for the death of his ideals. If he did, I imagine he came in sorrow. Mr. Wilson continues:

> The proposed Federal legislation with regard to the regulation of child labor affords a striking example. If the power to regulate commerce between the States can be stretched—

This sounds like just some of my speech. That is one reason why I am so strong for him, and always have been—

> can be stretched to include the regulation of labor in mills and factories it can be made to embrace every particular of the industrial organization and action of the country.

Including the Senator's cotton pickers down in Arkansas:

> The only limitations Congress would observe should the Supreme Court assent to such obviously absurd extravagancies of interpretation would be the limitations of opinion and of circumstance.

I would not care in this presence to so characterize the proposition submitted by the distinguished Senator from Arkansas, but I must read the book right. It was in the book and it is right:

> It is important, therefore, to look at the facts and to understand the real character—

I am still reading from Mr. Wilson—

> of the political and economic materials of our own day very clearly and with a statesmanlike vision, as the makers of the Constitution understood the conditions they dealt with.

He was everlasting and eternally right, and he is right yet; and I dislike to credit any report from any irresponsible newspaper source or from any Senator that the President has paper source or from any Senator that the President has reversed all of these sound views. I simply can not believe it.

> If the jealousies of the colonies and of the little States which sprang out of them had not obliged the makers of the Constitution to leave the greater part of legal regulation in the hands of the States, it would have been wise, it would even have been necessary, to invent such a division of powers as was actually agreed upon. It is not, at bottom, a question of sovereignty or of any other political abstraction; it is a question of vitality. Uniform regulation of the economic conditions of a vast territory and a various people like the United States would be mischievous, if not impossible.

Jefferson himself never put it any stronger or any better. But Mr. Wilson continues:

> The statesmanship which really attempts it is premature and unwise. Undoubtedly the recent economic development of the country, particularly the development of the last two decades, has obliterated many boundaries, made many interests national and common, which until our own day were separate and local; but the lines of these great changes we have not yet clearly traced or studiously enough considered. To distinguish them and provide for them is the task which is to test the statesmanship of our generation; and it is already plain that, great as they are, these new combinations of interest have not yet gone so far as to make the States mere units of local government. Not our legal conscience merely, but our practical interests as well, call upon us to discriminate and be careful, with the care of men who handle the vital stuff of a great constitutional government.

You might have said, if I did not read some more of it, that that let him out; that he was preparing for this change of front that you now charge him with. Let us see.

Again, Mr. Wilson says:

> The United States are not a single, homogeneous community. In spite of a certain superficial sameness which seems to impart to Americans a common type and point of view, they still contain communities at almost every stage of development, illustrating in their social and economic structure almost every modern variety of interest and prejudice, following occupations of every kind, in climates of every sort that the Temperate Zone affords. This variety of fact and condition, these substantial economic and social contrasts, do not in all cases follow State lines. They are often contrasts between region and region rather than between State and State. But they are none the less real, and are in many instances permanent and ineradicable.

I am not going to read all of this, but I want to read one more quotation from it.

Again, Mr. Wilson says:

> It would be fatal to our political vitality really to strip the States of their powers and transfer them to the Federal Government. It can not be too often repeated that it has been the privilege of separate development secured to the several regions of the country by the Constitution, and not the privilege of separate development only, but also that other more fundamental privilege that lies back of it, the privilege of independent local opinion and individual conviction, which has given speed, facility, vigor, and certainty to the processes of our economic and political growth.

Now, listen. I commend this to my friends who advocate this bill:

> To buy temporary ease and convenience for the performance of a few great tasks of the hour at the expense of that—
>
> "That" is local self-government—
>
> would be to pay too great a price and to cheat all generations for the sake of one.

Jefferson never wrote sounder Democracy nor sounder Americanism. Madison never contended for a more correct principle. The eloquent dead Senator from my own State, from whom I quoted at length, analytical and eloquent as he was, never in his life expressed it better. It was true when he said it, and it is true to-day. It is the ark of the covenant of my faith, and upon it I still rest.

Mr. KENYON. Mr. President——

The VICE PRESIDENT. Does the Senator from Georgia yield to the Senator from Iowa?

Mr. HARDWICK. I yield to the Senator.

Mr. KENYON. Does the Senator remember that on the President's western trip—I can not quote him exactly—but he said, substantially, referring to his change of mind on the preparedness question, that when he ceased to change his mind he would become a back number? Does not the Senator recognize the right of the President to change his mind and not to become a back number?

Mr. HARDWICK. Undoubtedly; and I am not criticizing him for it. In fact, I am not certain that he has done it—not at all.

Mr. ROBINSON. The Senator knows that the Democratic platform declared for it.

Mr. HARDWICK. I decline to yield to the Senator. I am not sure that the President has changed his mind on this question, even if he has, as alleged, changed his position.

Mr. ROBINSON. Does the Senator decline to yield to a question?

Mr. HARDWICK. I decline to yield now. I am going to make my statement in my own way.

Mr. ROBINSON. I thought the Senator invited interruptions.

Mr. HARDWICK. The Senator from Arkansas declined to yield to everybody, if my recollection is correct.

Mr. ROBINSON. No; I did not decline to yield; but, as I said, I preferred not to yield to controversial questions.

Mr. HARDWICK. I beg the Senator's pardon.

Mr. ROBINSON. I merely wanted to know if the Senator from Georgia did not know that the plank of the platform on

which the President was running for President declared for this bill?

Mr. HARDWICK. What is a plank of a party platform against the Constitution?

Mr. ROBINSON. If the Senator will yield for another question, I wish to say that he has suggested that he did not know the President's attitude upon this subject. Is the Senator serious in that statement or is he humorous?

Mr. HARDWICK. Well, I will tell you. The Senator has put me a pretty hard question. Of course it is half serious, and only half serious.

Mr. ROBINSON. I will withdraw it.

Mr. HARDWICK. No; do not withdraw it. I am going to answer it. You need not worry.

It is reported that the President came up here—the newspapers said so—and asked for the passage of this bill and insisted on it at this session, prior to the election. I have some reason to believe that that may be accurate, but the reasons for his change of heart and whether he still believes what he has written in this book I do not know and can not say; but I have yet to see the color of the Senator's hair or eyes who can give me any accurate information on the subject.

Ah, Senators, I do not know what course others may adopt, but as for me and mine we will serve the Lord on this question. We are not going to surrender the rights of the States; we are not going to surrender the blessings of local self-government; we are not going to surrender, so far as I can prevent it, the fundamental principles of American liberty and of American constitutional government, to advance any campaign or to do anything political in any way whatever. "If that be treason, make the most of it"; if that be disloyalty, the oath I took and the obligation I owe to the 3,000,000 people of Georgia and to her dead as well as to her living, to her great men who sat in this Chamber and who have illustrated American constitutional principles on this floor, compels me, so long as my own view of the Constitution remains as it is—and it is not likely to change—to stand steadfast for the rights of the States, for local self-government, for the Constitution that our fathers wrote.

Ah, Senators, the Senator from California [Mr. WORKS] struck at the very kernel of it. This bill hardly pretends to be even a subterfuge; it simply says to a man in Georgia, in Iowa, in New Jersey, or in any other State of this Union, "You regulate the hours of employment and conditions of labor, purely domestic and internal affairs, admittedly matters of State concern, and of exclusive State concern, according to the standards we set up or we will not"—do what? "We not only will not admit the product of labor that is not in accordance with our standards to our channels of interstate commerce, and permit it to be carried by our agencies into commerce, but whatever else you have got, whatever else you make, even if labor of that prohibited kind was not employed in it, we will put that out, too, because you did not obey our law." That is what it amounts to.

You could say to him with equal right, so far as the power goes, that a man who runs a factory like that in violation of this congressional rule of civil conduct will not be allowed to go on a passenger train or to carry his wife and children on a passenger train in interstate commerce. You could say to a man who printed the lottery ticket, "You may print Sunday-school hymns, but they shall not go into interstate commerce, because they came out of the same factory from which lottery tickets came." You may say to a man who prints lottery tickets, "You may print the Bible, the Word of Almighty God, but it shall not go because the same printing press that runs off the lottery ticket runs off the Bible; and the Bible, under those circumstances, is liable to do tremendous harm."

You do not even profess to confine your prohibition to the product; you do not even pretend that you are merely indulging in a nice little fiction about this thing; but you undertake to prohibit the shipment of articles perfectly legitimate in character, inherently sound, through the channels of interstate commerce simply because some man will not do what you tell him about the kind of laborers he shall employ or how many hours he shall require them to work in whatever State he happens to reside, regardless of what are the laws of that State on the subject.

Ah, Senators, there is no need to pursue the subject. It is demonstration complete; there is no answer to it. The bill is subterfuge and indirection, unashamed and confessed. That is what it is. If you can do that, as I suggested to my friend from Arkansas, you can also say that you will not permit the product of any factories that employ people over eight hours a day to go through the channels of interstate commerce, and you can make for that proposition every argument of humanity and humanitarianism, every appeal to sentiment and sentimentalism, that is made for this bill in the opinion of a vast number of people; and, after all, according to the Senator's theory, what difference does it make, because if Congress is the judge, and if Congress says that it is a great and humane purpose to allow only those articles that are made by eight-hour labor to go through the channels of interstate commerce and that anything else is wicked and inhumane and offends the great public sentiment of this country, and that position can be sustained, there is no limit to congressional power; none whatever.

I warn the Senator from Arkansas, and I warn every other Senator on this side of the Chamber, that he is about to open a Pandora's box that sooner or later will destroy our people because of the noxious diseases that is will unloose. The evil may be very small in regard to this particular matter, it may be almost infinitesimal, but I will tell you right now, Senators, that I believe a majority of the States in the Union have already better child-labor laws than this bill proposes; so there is little real need for this legislation.

Oh, Senators, if you want to get a mess of pottage for your birthright again, for heaven's sake get something that you need more than you do this thing; get something that is worth while to you; get something that will do some practical good. I invite any Senator on this floor to challenge my statement this morning that the child-labor law of my own Commonwealth, which this bill seeks to supersede, is better than the law that would supplant it.

Mr. HUGHES. Mr. President, I understand the Senator——

The PRESIDING OFFICER (Mr. BRANDEGEE in the chair). The Chair will request Senators when they seek to take the floor to address the Chair.

Mr. HARDWICK. I yield to the Senator.

Mr. HUGHES. Do I understand the Senator to be of the opinion that this law, if enacted, would supersede the law of his own State?

Mr. HARDWICK. Undoubtedly it will, because almost 99 per cent of modern business, or at least a great per cent of it, must go through the channels of interstate commerce. The Senator knows that as well as I do. There is not a great factory in any great State of this Union that could live if its products were denied shipment in interstate commerce. Therefore, they must reform to whatever requirements Congress makes.

Mr. HUGHES. Mr. President——

Mr. VARDAMAN. Mr. President, if the Senator will pardon me.

The PRESIDING OFFICER. Does the Senator from Georgia yield, and, if so, to whom?

Mr. HARDWICK. I yield to the Senator from Mississippi.

Mr. VARDAMAN. I was merely going to suggest to the Senator that the enactment of this bill would not interfere in any way with the efficiency of the law in force in the States, so far as the regulation of factories is concerned for State purposes.

Mr. HARDWICK. That is true, technically speaking, but I will say to the Senator that if you impose this obligation, this standard on the people of a State, they will simply be unable to do business, unless they can also send their products through the channels of interstate commerce.

Mr. VARDAMAN. The Senator misunderstands me.

Mr. HARDWICK. Probably I do.

Mr. VARDAMAN. The State of Georgia has enacted a law for the protection of the children of Georgia. The enactment of this bill will not impair in any way the Georgia law for the protection of the Georgia children. That law will remain in force; and the Federal law would only have reference to the right to use the mediums of interstate commerce.

Mr. HARDWICK. That is another question, if it will, and it will not. It will not interfere, so far as the technical proposition is concerned that the State law remains on the books; but it will absolutely supersede and destroy the State law, because the mills can not live and do business unless they can come under the terms of this bill and can ship their product through the channels of interstate commerce. Am I right about that? I do not think there are any two views possible about that.

Mr. HUGHES. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from New Jersey?

Mr. HARDWICK. I yield.

Mr. HUGHES. I think the Senator and I misunderstand each other. The point I was trying to make is this: The State of Georgia or any other State can go on enacting more and more favorable legislation on this subject than it now has.

Mr. HARDWICK. I will say to the Senator that we have a law in the State of Georgia that, according to my information—and I think it is accurate—everybody agrees is a better

law than the law which it is now proposed to place on the Federal statute book, and yet no matter what our law may be we are told that we have not sense enough to attend to our own business; that we do not know how to enact a law that suits our local conditions, but that Congress, in its wisdom, knows more than we do and knows better about this purely local matter. I was not in the legislature which enacted that law, and I do not contend that the legislature of my State is infallible, but I do believe it has enacted a wise, just, and humane law on this subject and will improve it whenever the opportunity for improvement presents itself.

Mr. ROBINSON. Mr. President, will the Senator from Georgia yield?

Mr. HARDWICK. In just a moment—but I do say that I had rather trust the legislature of my State, yea, a thousand times, to act on local matters, to pass on the laws of contract, of life and death, of liberty and imprisonment, of labor, and of everything else within the bounds of the State, than to have such legislation enacted in Washington, where men have not the time to transact such business for them, nor the inclination to do so, nor the opportunity to acquire the information that is necessary to enable them to do what is right, and never can know what is right as to such matters. Now I yield to the Senator from Arkansas.

Mr. ROBINSON. Mr. President, I should like to ask the Senator from Georgia a question for information. Is it not a fact that Georgia has a 60-hour-a-week limitation or provision in its law; and is it not also a fact that in its operation it allows 11 hours a day labor, because of the fact that it is the custom in that State to work only five and a half days a week, Saturday afternoon being an actual holiday; and if, under the law of Georgia, children do not work 11 hours a day in factories?

Mr. HARDWICK. Mr. President, I want to read, since the question has been raised, Georgia's statute on this question. That is the answer, of course.

Mr. ROBINSON. I do not care to have it read. I am familiar with it; and that is my construction of it, together with the information I have concerning it.

Mr. HARDWICK. I want the Senate to see how just the Senator's construction of it is, and that is why I want to read it. The Senator, as I understood, wanted to ask me the question for information.

Mr. ROBINSON. I will take the word of the Senator from Georgia upon the statute; but I ask him if it is not a fact that under the provisions of the local law in the State of Georgia an 11-hour day is enforced?

Mr. HARDWICK. I do not think so.

Mr. ROBINSON. Or 60 hours per week, with a half day on Saturday.

Mr. HARDWICK. I do not think that can be the case under the State statute.

Mr. ROBINSON. It might be if the statute were not enforced.

Mr. HARDWICK. Oh, the suggestion does not do the Senator credit, although, of course, he does not so intend it. We have a law-abiding people.

Mr. ROBINSON. I do not question that.

Mr. HARDWICK. And the law is enforced; there is no trouble about that. We have about as much machinery for its enforcement as is provided in the pending bill, except we have not provided for a lot of spying inspectors.

Mr. ROBINSON. What is the limitation as to hours per week and as to the age of children?

Mr. HARDWICK. I am going to read the law.

Mr. FLETCHER. Mr. President, if I may interrupt the Senator, even if it be conceded that the law is not properly enforced in Georgia, has Congress authority to go into a State and see to the enforcement of the State law?

Mr. HARDWICK. It seems so from the contention that is being made here in connection with this bill.

Mr. ROBINSON. Nobody contends that.

Mr. HARDWICK. I am glad to learn that.

Mr. ROBINSON. The Senator from Georgia, I am sure, did not understand me as making such a contention.

Mr. HARDWICK. I have known people to contend that, and it is the contention of a very strong element in this country, with which the Senator seems to be aligned in this matter. That is one of the arguments made—that if the States do not enforce their laws, then the Government shall intervene.

Mr. ROBINSON. That might be an argument in justification of Congress exercising such powers as it has to correct a recognized evil.

Mr. HARDWICK. I do not believe that Congress has any power to enforce the laws of a State.

Mr. ROBINSON. Nobody claims that Congress has power to enforce State laws. Congress enforces its own laws; but the fact that the States do not enforce their own laws as to matters of this kind might justify Congress, in exercising the power it possesses to regulate commerce, to suppress an evil.

Mr. HARDWICK. I do not think so. The Senator has elaborated his views on the subject, and I understand them. I am glad he is not quite so bad as I thought he was on this question when I first heard him. He will get back, perhaps, to his ancient moorings at some time, but the lesson, I fear, will be a bitter one before he does.

Mr. ROBINSON. Mr. President, did the Senator understand me to say that I thought the Federal Congress could enforce a State law, a law enacted by a State legislature?

Mr. HARDWICK. I will tell the Senator what I understood him to say. I understood the Senator to say—and his conduct speaks louder than his words—that Congress can say to a man in Georgia, "You must not work labor of a certain kind, or you must not work labor more than certain hours"—admittedly matters of local regulation, admittedly matters for domestic regulation by the State governments—"or, if you do you can not transport the articles you make through the channels of interstate commerce, and before we get through with you we may conclude not to let you and your wife ride on the railroad trains."

Mr. President, I am a little weary, and I now ask the Secretary to read the statute of Georgia on this question.

The PRESIDING OFFICER. Without objection, the Secretary will read the statute referred to.

The Secretary read as follows:

REGULATING EMPLOYMENT OF CHILD LABOR.

An act regulating the employment of children; to provide for the issuance of certificates with reference to age and educational qualifications of children; the revocation of such certificates by the commissioner of labor; designating prohibited hours of labor for such children; making it the duty of the commissioner of labor and authorized assistants to enforce this act; making it a misdemeanor to violate the provisions of this act; and to repeal the act approved August 1, 1906, entitled "An act to regulate the employment of children in factories and manufacturing establishments in this State, and to provide for the punishments of violations of the regulations prescribed, and for other purposes," and which said act repealed is codified in sections 3143, 3144, 3145, 3146, 3147, 3148, and 3149 of the Code of Georgia of 1910, and for other purposes.

Be it enacted by the General Assembly of Georgia, That no child under the age of 14 years shall be employed by or permitted to work in or about any mill, factory, laundry, manufacturing establishment, or place of amusement, except that children over 12 years of age who have widowed mothers dependent upon them for support, or orphan children over 12 years of age dependent upon their own labor for support, may work in factories and manufactories, except that the foregoing provisions of this section shall not be applicable in instances specified and provided for in section 8 of this act.

SEC. 2. Be it further enacted by the authority aforesaid, that no child under 14 years and 6 months shall be employed or be permitted to work in any of the establishments or occupations mentioned in section 1, unless the person, firm, or corporation employing such child has and keeps on file accessible to the officials charged with the enforcement of this act a certificate from the superintendent of schools in the county or city in which such child resides, that such child is not less than 14 years of age, has attended school for not less than 12 weeks of the 12 months preceding the date of issuance of such certificate, except that the foregoing provisions of this section shall not be applicable in instances specified and provided for in section 8 of this act.

SEC. 3. Be it further enacted by the authority aforesaid that the certificate mentioned in the foregoing section shall state the full name, date and place of birth of the child, with the name and address of the parent, guardian, or person sustaining the parental relationship to such child, and that the child has appeared before the officer and satisfactory evidence submitted that the child is of legal age. Blank forms of these certificates shall be furnished by the commissioner of labor to the superintendent of schools in the respective cities and counties. A duplicate copy of each certificate shall be filed with the commissioner of labor within four days from its issuance. The commissioner of labor may at any time revoke any certificate if, in his judgment, the certificate was improperly issued. He is authorized to investigate the true age of any child employed, hear evidence, and require the production of relevant books or documents. If the certificate is revoked, the then employer shall be notified, and said child shall not thereafter be employed or permitted to labor until a new certificate has been legally obtained, except that the foregoing provisions of this section shall not be applicable in instances specified and provided for in section 8 of this act.

SEC. 4. Be it further enacted by the authority aforesaid that no child under 14 years and 6 months of age shall be permitted to work in or about any of the establishments mentioned in section 1 or section 2 of this act between the hours of 7 p. m. and 6 a. m., according to the standard time of the community in which such establishment is located.

SEC. 5. Be it further enacted by the authority aforesaid that it shall be the duty of the commissioner of labor and his authorized assistants to see that the provisions of this act are enforced.

SEC. 6. Be it further enacted by the authority aforesaid that any person, agent, or representative of any firm or corporation violating any of the provisions of this act, or any parent, guardian, or other person standing in parental relationship to any child, who shall hire or place for employment or labor any child under the age limits in any of the establishments or occupations mentioned in section 1 of this act, or any superintendent of county or city schools who shall issue a certificate knowing that its issuance was illegal; or any person who shall knowingly furnish any untrue evidence with reference to the date or place of birth of said child, or the age of said child, or its educational qualifications, shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

SEC. 7. Be it further enacted by the authority aforesaid, that the act approved August 1, 1906, and entitled "An act to regulate the employment of children in factories and manufacturing establishments in this State and to provide for the punishment of violations of the regulations prescribed and for other purposes and codified in sections 3143 to 3149 inclusive, of the Code of Georgia of 1910, is hereby repealed.

SEC. 8. Be it further enacted by the authority aforesaid, that it shall be lawful for a child 12 years of age or more to work in and for a mill, factory, laundry, manufacturing establishment, or place of amusement if such child has dependent upon his labor a widowed mother or if such child is an orphan dependent upon his own labor. Whenever such child desires to work in any of such places as is specified above the fact that such child's labor is necessary to support a widowed mother or to support such orphan child must be found to be true after an investigation by a commission composed of the county school superintendent and the ordinary of the county where the work is to be done, and the head of the school in the school district where the said child lives. After an investigation by said commission if it, or a majority of its members, find that the facts exist to authorize such child to work in or for any of the establishments mentioned in section 1 of this act, because of the existence of either of the conditions hereinbefore set out, such commission shall issue a certificate to that effect which shall be kept on file in the office of the establishment where said child is at work. Such commission shall make an investigation and issue a new certificate at least once each six months and may prescribe as a condition precedent to issuance of such certificate school attendance for such length of time and at such time as in its discretion seems wise. No such certificate more than six months old should authorize the employment of any child under 14½ years of age in or for any of the places specified in section 1 of this act.

SEC. 9. Be it further enacted by the authority aforesaid that all laws and parts of laws in conflict with the provisions of this act be, and they are hereby, repealed.

SEC. 10. Be it further enacted by the authority aforesaid that the provisions of this act shall be in force on and after January 1, 1915.

Approved August 14, 1914.

Mr. HARDWICK. Mr. President, in a very able and carefully considered speech delivered on this floor on the 26th day of February of this year, and a speech that in my opinion does him great credit as a lawyer, because it is one of the few close-knit, real arguments on the other side that I have had the opportunity to read on this question, the distinguished junior Senator from Iowa [Mr. KENYON] made this remark, almost at the conclusion of his great speech:

Now, Mr. President, I have taken a great deal more time than I should have done. I do not know, if Congress has a doubt about the constitutionality of a proposed legislative enactment, just what its duty is. That is for each Member to determine.

By the way, the very able and very candid Senator from Iowa expressed what I regarded as a doubt in his own mind on that very subject.

He continued:

It is a principle of constitutional law, however, that all legislation, whether of Congress or of the States, must be taken to be valid unless the contrary is clearly shown. Of course, when a law comes before a court for interpretation it is to a certain extent limited by the fact that every presumption is in favor of constitutionality. Hence Congress should carefully consider constitutional questions. But it does seem to me that a mere question in one's mind as to whether or not a court may hold a statute unconstitutional is not enough to warrant voting against a measure even where it may fairly be said to be a somewhat doubtful question.

The Senator from Iowa expressed in those words a view that is all too prevalent, especially among careless and inexperienced legislators. You often hear discussions in the cloakrooms, and sometimes upon the floors of both Houses of Congress, in which Senators and Representatives express themselves about in this way: "Well, I am very doubtful about the constitutionality of this legislation; but, after all, the courts must construe it. Therefore I am going to vote for it and let its constitutionality be decided by the courts."

The Senator from Iowa, expressing this view with some qualifications that do him credit, although unfortunately he did not get away from the substantial ground that this class of legislators occupy, has, in my judgment, called attention to what is one of the most serious dangers in our whole constitutional system. He has adverted to what has become a common practice, unfortunately, among too many Members of both Houses of Congress, and even some of them good lawyers like my friend from Iowa. On the contrary, I say to my friend that the very reverse of his proposition is true; that the very opposite of his position is the true and statesmanlike ground, and the only ground that a legislator who understands the American constitutional system can afford to occupy or can safely stand upon. Since the courts give every doubt in favor of the constitutionality of legislation, for that very reason it is the solemn, bounden duty of legislators to resolve every doubt against the constitutionality of measures.

Mr. KENYON and Mr. CLAPP addressed the Chair.

Mr. HARDWICK. I yield to the Senator from Iowa.

Mr. KENYON. I do not want to interrupt the Senator——

Mr. HARDWICK. It will not interrupt me at all.

Mr. KENYON. But if the principle the Senator lays down had been followed, we would have had no employers' liability act, no pure food and drugs act, and certainly no white-slave act, would we?

Mr. HARDWICK. Well, it depends. I will answer the Senator candidly——

Mr. KENYON. In all of those, I think—if the Senator will follow the briefs in those cases, as he probably has done, and as I have done—the same argument was made as to the constitutional questions.

Mr. HARDWICK. I am going to discuss each one of those cases before I get through. Of course, legislation of that character—most of it, at least—never could have gotten the support of the Senator from Georgia, and did not get it, because I was utterly unable to decide that the legislation was constitutional.

Mr. KENYON. The Senator from Georgia would have contended, I assume, that the white-slave act was unconstitutional?

Mr. HARDWICK. I thought so, and voted against it for that reason. That is my recollection of my record.

Mr. WALSH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from Montana?

Mr. HARDWICK. I yield to the Senator.

Mr. WALSH. Under that rule we never would have had any United States bank, either.

Mr. HARDWICK. And if you do not adopt that rule you will not have any States very much longer, in my judgment.

Mr. WALSH. And if we never had had any United States bank we never would have had any national banking system.

Mr. HARDWICK. Well, it depends. In answering the Senator's question, I think I will touch the thought the Senator has in mind. It depends. Legislators, of course, who have no reasonable doubt—I am going to interpolate the word "reasonable" there—will not hesitate to support legislation of that character; or, if there is grave doubt in the minds of a majority that it can be constitutionally enacted, then, if the legislation is indispensable, there must be some amendment of the Constitution, as we have done about the election of Senators, the levying of an income tax, and such questions as that. The Senator's position that if you are in doubt you should resolve the doubt against your scruples on constitutional matters is in my judgment not only inherently unsound, but is as dangerous a doctrine as was ever announced in the American Senate.

Mr. BORAH. Mr. President——

Mr. HARDWICK. I yield to the Senator from Idaho.

Mr. BORAH. I understood the Senator to say that the rule by which one should be guided in voting for a bill or against it, when the constitutionality of it was involved, was this—that if the Senator has a doubt as to its constitutionality, he should vote against it.

Mr. HARDWICK. Well, a serious doubt. I do not mean a trivial doubt. I am using the word in its ordinary significance. I mean a real, substantial doubt.

Mr. BORAH. A substantial doubt. Of course, if it is a well-grounded doubt, a well-founded one, that might be true; but if the Supreme Court seems to have announced principles under which the law could be sustained, and has taken a position which would make it constitutional as you interpret it, and if you believe the measure to be a beneficent measure, a good measure, would the Senator still resolve his own individual doubts against the law?

Mr. HARDWICK. Undoubtedly; and the Senator from Idaho would, too, if he will face this question squarely, because it is not right, it is not just, it is not honest, to substitute for my judgment as a Senator from Georgia and a Member of this body the judgment of any other man on this earth. I was sent here by 3,000,000 people to discharge my duty to them according to my own mentality; and so with the Senator from Idaho, and so with every other Member of this body. Every legislator is just as much the guardian, the conservator, the preserver of the Constitution of his country, which he has sworn to support, as any judge can possibly be. Every legislator must act independently, on his own honest judgment. Courts have been known to reverse themselves. If the Senator adopts any such convenient system of "doubts" as he suggests, he might find himself in the place of the man who did not know anything but statute law, and the legislature came along and repealed all that he knew. [Laughter.] He might find the courts jumping so fast that a stable, well-balanced, well-grounded gentleman of the Senator's type and caliber would not be able to jump with them. Courts are constantly reversing themselves.

Mr. BORAH. Mr. President, I accept the proposition, under our theory of government, that when the Constitution of the United States is construed by the Supreme Court of the United States, that is my guide, whether prior to the decision it would have been my judgment or not.

Mr. HARDWICK. That is true. I am going to agree with the Senator that far, when it is plainly, clearly ruled, and there is no escape from the ruling. But in the region of doubt, where it is uncertain how far the tendency has proceeded, where it is

uncertain whether the particular question which the Senator as a legislator would pass upon has been decided or not, there can be no such doctrine soundly applied. Am I not right?

Mr. BORAH. I will respond to the Senator in a minute.

Mr. VARDAMAN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from Mississippi?

Mr. HARDWICK. I do.

Mr. VARDAMAN. I want to suggest to the Senator from Georgia, in support of the position he is taking, that many of the great lawyers of this country who lived contemporarily with the adoption of the Constitution felt that the Congress ought to be, in the matter of construing the Constitution, the court of last resort.

Mr. HARDWICK. Oh, yes. Not only that——

Mr. CLAPP. But it is not.

Mr. HARDWICK. Not only that but the Senator knows that the framers of the Constitution did not at all intend that the Supreme Court should declare acts of Congress unconstitutional.

Mr. BORAH. Oh, no; the Senator does not know that at all. The Senator entertains quite the opposite view.

Mr. HUGHES. The Senator ought to have found it out by this time.

Mr. HARDWICK. Does the Senator dispute that proposition?

Mr. BORAH. If I understood the Senator correctly, I do.

Mr. HARDWICK. Probably I did not express myself clearly. I said that the Constitutional Convention did not intend to confer the power that the Supreme Court has since assumed, to declare invalid or unconstitutional an act of Congress.

Mr. BORAH. Oh, I do not at all agree with that doctrine. Both historically and according to the terms of the Constitution I reject the doctrine.

Mr. HARDWICK. The Senator knows the warrant and authority for it, anyway. I will not go into a side issue of that kind at this time. There is ample warrant and authority for the statement I have made.

Mr. BORAH. I do not know that; I would not say "ample."

Mr. CLAPP. The Constitutional Convention refused on two votes to confer such a power on that court.

Mr. BORAH. That is all right. The great framers of the Constitution—Mr. Madison, whom the Senator has cited; Mr. Hamilton, and that class of men—expressed themselves beyond question in favor of the proposition that the Supreme Court of the United States could do precisely what Chief Justice Marshall finally said it should do.

Mr. HARDWICK. Yes; and the Constitutional Convention that framed the Constitution twice voted, unless my memory is inaccurate, that they would confer no such power.

Mr. BORAH. No; the Constitutional Convention did not, in my opinion, decide that precise question by a vote at all. That was not the precise question which was before them when they took the vote. I have undertaken to analyze the opinion of the members of the Constitutional Convention; and many of the leading members of it, the men who will be recalled to us now as being the framers of the Constitution, announced themselves in favor of the doctrine that the Supreme Court of the United States could declare a statute unconstitutional.

Mr. HARDWICK. The Senator knows the authority for the position I have taken. It is ample. He may not agree with it, but the fact remains that votes were taken that, in my judgment—I will put them in the RECORD at some time when I have more time than this—mean absolutely that. Furthermore, I want to suggest to the Senator that it is not the part of brave, honorable, honest statesmanship to shift responsibility. I know the Senator will agree with me about that. We have our responsibility.

Mr. BORAH. I agree perfectly with the Senator as to the proposition of not shifting responsibility; but I want to go back for a moment to a time long prior to the adoption of the Constitution of 1787. In at least several of the States the courts of last resort had laid down the doctrine, which afterwards came to be the doctrine of the Supreme Court of the United States, that a court of last resort must necessarily declare a statute unconstitutional when it came in conflict with the Constitution. That was an established principle in American courts at the time of the adoption of the Constitution of the United States.

Mr. CLAPP. In two States.

Mr. BORAH. In more than two, I think.

Mr. CLAPP. No; only two.

Mr. BORAH. I beg the Senator's pardon, but I think he is in error. I know that a distinguished professor has lately written a book in which he has undertaken to prove that the Supreme Court of the United States pulled that doctrine out of their minds and said it was a new proposition at the time it was announced by the Supreme Court of the United States. A more fallacious, disingenuous interpretation of the history of our country was never advanced by a learned professor. Courts of last resort in the States had laid down a different doctrine, and the leading members of the Constitutional Convention had also announced the same doctrine, and announced it in the Constitutional Convention.

Mr. HARDWICK. It is bootless to engage in a controversy about a matter that I must concede is now finally settled.

Mr. CLAPP. Chief Justice Marshall did not refer to any decisions.

Mr. BORAH. Chief Justice Marshall wrote opinion after opinion and never referred to any decisions; but the fact remains, nevertheless, that the decisions are in existence.

Mr. CLAPP. Two of them.

Mr. BORAH. All you have to do is to send to the Library to get them.

Mr. HARDWICK. Undoubtedly.

Mr. BORAH. They are remarkably reasoned, and sustained by argument.

Mr. HARDWICK. Oh, undoubtedly. The Senator from Georgia is familiar with those decisions, if he may say so without any claim to too great knowledge of the law. He is familiar with those decisions; and it is bootless to pursue, especially as I want to conclude as early as I can, so largely theoretical a controversy as this is at the present time. At some other time, if we have more time, I shall be glad to engage the Senator from Idaho on that, and present to him in detail the reasons and authorities on which I base my opinion that the Constitutional Convention did not intend to confer on the Supreme Court of the United States the power to declare unconstitutional the acts of Congress. Be that as it may, they have assumed that power. They have sustained it, as the Senator says, in powerfully reasoned opinions, and it is no longer a matter of controversy among good lawyers or among legislators. But in no respectable quarter has the doctrine been advanced that Members of Congress of either the House or the Senate can shield themselves behind the Supreme Court and shelve off on the Supreme Court their responsibilities to support and defend the Constitution of the United States against its enemies, foreign and domestic, and to observe and comply with its limitations and requirements.

Mr. CLAPP. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from Minnesota?

Mr. HARDWICK. I yield to the Senator.

Mr. CLAPP. In view of the Supreme Court having established the doctrine that it is the final tribunal to determine the constitutionality of a question, is there not danger that a Senator, by giving too much force to his doubt, may deprive the public and the proponents of a measure of an opportunity to get the determination of that final tribunal as to the constitutionality of a proposed law? It seems to me we should guard against that.

Mr. HARDWICK. I do not think so, Mr. President. The duty of a legislature in respect to this question is just as important, just as vital, just as functional, as any ever imposed on any court. It is a part of the necessary functions of our Government that the legislative body itself shall determine for itself while it is engaged in the lawmaking business the limitation of the constitutional power. The Supreme Court raises that question when it comes to the business of construing the law that the legislature has enacted.

From the first I realized that this contention of mine was liable to bring about just the sort of rejoinders from Senators and others who will not shoulder their responsibilities, but who go on and say, "After all, I do not know whether it is constitutional or not, and we will leave it to the court to decide."

I did not want to rest entirely on my own opinion; I think it would not carry enough weight with the Senate; so, in support of the view I have advanced, I have here the greatest constitutional authority that ever dealt with the Constitution of the United States, and I commend it to the Senator from Iowa and the Senator from Minnesota and the Senator from Idaho as well. In Cooley on Constitutional Law, third edition, pages 171 and 172, Judge Cooley said:

> A doubt of the constitutional validity of a statute is never sufficient to warrant its being set aside.

He is speaking of the court there, as we will see later.

> It is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers and its acts to be considered as void. The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other. It is but a decent respect due to the wisdom, the integrity, and the patriotism of the

legislative body by which any law is passed to presume in favor of its validity until its violation of the Constitution is proved beyond all reasonable doubt. To be in doubt, therefore, is to be resolved, and the resolution must support the law.

That was as far as concerns the court. But listen to this:

This course is the opposite to that which is required of the legislature in considering the question of passing a proposed law. Legislators have their authority measured by the Constitution. They are chosen to do what it permits and nothing more, and they take solemn oath to obey and support it. When they disregard its provisions they usurp authority, abuse their trust, and violate the promise they have confirmed by an oath. To pass an act when they are in doubt whether it does not violate the Constitution is to treat as of no force the most imperative obligations any person can assume. A business agent who would deal in that manner with his principal's business—

I commend this opinion to the Senator from Montana [Mr. WALSH] also. Judge Cooley continues:

A business agent who would deal in that manner with his principal's business would be treated as untrustworthy. A witness in court who would treat his oath thus lightly and affirm things concerning which he was in doubt would be held a criminal. Indeed, it is because the legislature has applied the judgment of its members to the question of its authority to pass the proposed law and has only passed it after being satisfied of the authority that the judiciary waive their own doubts and give it their support.

Judge Cooley is right. That is sound; it is sound law; it is sound morals, if I am any judge of correct principles.

This business of saying, "Oh, well, I do not know exactly what can be done; it is very doubtful, and I will leave it to somebody else," when you have sworn that you will obey and support the Constitution of the United States, is not performing the duties Senators and Representatives owe to their constituencies, to themselves, and to their own oaths.

Mr. President, having laid down that premise as to the duty of a legislator I wish to discuss in as condensed a form as I can some of the legal questions involved in this measure and raised by it.

Let me say, Mr. President, very frankly that I am utterly without hope that anything I can do or say to-day, or that any other Senator can do or say here to-day, will alter or affect the result, so far as the Senate is concerned. I say it with a feeling of profound sadness, for, Senators, I am sorry that the time has not come—has not come again would be the right way to put it—when we can do as our fathers did, as our illustrious predecessors in this Chamber did in days that are gone, and without regard to the advantages of party politics, without regard to making popular appeals for something that seems to be popular for the moment, do our duty as Senators of the United States under the oath of office we have taken and under the Constitution of the country.

Mr. SMOOT. That was before we had a program mapped out.

Mr. HARDWICK. The Senator suggests it was before we had a program. There is force in that. One party is as guilty as another in that respect, and all have been too guilty.

Oh, that the day of legislative independence in this country would return! Oh, that we could have Senators who would stand before the people of this country like Webster, Clay, Calhoun, Hill, and all the great Senators of the past, who had profound convictions that they stood by regardless of results! If the Senate has lost in popular estimation, if the Senate does not stand as highly as it ought to stand in the opinion of the people of the United States, then, Senators, I regret to say it, but the Senate itself is to blame. Sitting in the seat that Robert Toombs has filled, that Ben Hill has filled, representing the 3,000,000 people of the State of Georgia, I have determined that, as far as I am concerned, whatever may be the political or personal result, I am going to live up to my duty as a Senator of the United States so long as I serve in this body.

I am afraid that we yield too much to political considerations. I am afraid we think too much about what some possible or imaginary opponent may say about us when he goes on the stump against us in some campaign of the future. But it is one of the perils and one of the shortcomings of our American system of government that our fathers did not have quite so much trouble with, although I suppose they had enough politics in that time also; but it is one that has given us a great deal of concern and trouble. I served some seven terms in the House of Representatives before the people of Georgia elected me to fill the seat of the late Senator Bacon, upon the occasion of his untimely death.

I can tell you as the result of a legislative experience in both Houses of Congress extending through some 16 years or more that my own judgment is that we would have far better legislation and the public interests would be far better subserved if neither the President of the United States nor any Member of either House of Congress were ever eligible for reelection. We would have some inexperienced work of course, and Congress would make some mistakes, but there are plenty of men in all the States who could fill our places as well, if not better, than we do—at least, in my State I know that is true. If the temptation to intrigue for political success, if the temptation to so vote as to give you votes in the primary or votes in the election were removed, I have so high an opinion of the intelligence and integrity of this body and the other body of Congress that I know the American people would get vastly better legislation and a great deal less demagogy. That is the plain, sober truth on that proposition, I believe.

Mr. President, it is contended that the proposed legislation is constitutional because it is within the limit of the power conferred upon Congress by the Constitution to regulate commerce between the several States, with foreign nations, and with the Indian tribes. I utterly dissent from that contention. Remembering that our Government is a government of delegated powers and can exercise no power except a power expressly given it by the Constitution or necessarily implied from some express power, remembering that the Constitution of this country was framed in order to make commerce between the States free and unhampered, remembering that the primary purpose, in a material way at least, of the Constitution was to unhamper and unchain commerce between the States, to make it free to go from one end of this country to the other without discrimination, favoritism, or local burden, it is hard for me to assent at all to any of this newfangled doctrine of prohibiting commerce between the States, which has sprung up on this subject in recent years, although I think I can demonstrate to the Senate and to any court in this country that this case itself can be clearly differentiated from any decision on that subject that has ever yet been rendered by any respectable court in the United States of America.

The first case to which I refer, and I am going to read from it only briefly to lay down only one substantive proposition, is the case of Coe against Errol, reported in One hundred and sixteenth United States, page 578. Without reading at length from the opinion, because the opinion does not do more than substantiate the principle announced in the reporter's headnotes, I want to read the third headnote of this decision:

When goods, the product of a State, have begun to be transported from that State to another State, and not till then, they have become the subjects of interstate commerce, and, as such, are subject to national regulation and cease to be taxable by the State of their origin.

That is an old case, but it is a sound one.

Again—and again without elaboration—I read from the Daniel Ball case, decided in 1870 and reported in Tenth Wallace, page 557. The Supreme Court said, as given in the seventh headnote:

She was employed as an instrument of that commerce—

That is, commerce between the States—

She was employed as an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from one State to another commerce in that commodity between the States has commenced.

Mr. President, I am going to read next from an opinion in one of the leading cases in the entire jurisprudence of the United States. It ought to have great persuasive weight with this body, not only for its own inherent soundness, not only for its own intrinsic strength, but because the distinguished jurist who wrote it was one of the most brilliant ornaments of this great body for many years, a great American statesman as well as a jurist. I refer to former Justice L. Q. C. Lamar, from Mississippi, and to the well-known case of Kidd against Pearson. This decision, in my judgment, is the greatest monument to Justice Lamar that he left behind him in his whole public service, whether as a legislator or as a jurist. It is the one great case that stands out among the cases that he decided like some great mountain above the surrounding country. Justice Lamar said in his decision, rendered in 1888 (Kidd *v.* Pearson, 128 U. S., pp. 20, 21, 22):

No distinction is more popular to the common mind or more clearly expressed in economic and political literature than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this court in County of Mobile *v.* Kimball (102 U. S., 691, 702) is as follows: "Commerce with foreign countries, and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property as well as the purchase, sale, and exchange of commodities." If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future—

And yet that is the precise contention that the distinguished Senator from Arkansas now makes in this case—

it is impossible to deny that it would also include all productive industries that contemplate the same thing.

Take your wheat in the West, and if you worked over eight hours a day they might not let you ship it from one State to

another or to a foreign country. It would be that or worse about our cotton.

The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest and the cotton planter of the South, plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are and must be local in all the details of their successful management.

It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme, when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details.

It was said by Chief Justice Marshall, that it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the several States was to insure uniformity of regulation against conflicting and discriminating State legislation. See also County of Mobile *v.* Kimball, supra, at page 697.

This being true, how can it further that object so as to interpret the constitutional provision as to place upon Congress the obligation to exercise the supervisory powers just indicated? The demands of such a supervision would require, not uniform legislation generally applicable throughout the United States, but a swarm of statutes only locally applicable and utterly inconsistent. Any movement toward the establishment of rules of production in this vast country, with its many different climates and opportunities, could only be at the sacrifice of the peculiar advantages of a large part of the localities in it, if not of every one of them. On the other hand, any movement toward the local, detailed, and incongruous legislation required by such interpretation would be about the widest possible departure from the declared object of the clause in question—

That is, the interstate-commerce clause.

Nor this alone. Even in the exercise of the power contended for, Congress would be confined to the regulation, not of certain branches of industry, however numerous, but to those instances in each and every branch where the producer contemplated an interstate market. These instances would be almost infinite, as we have seen; but still there would always remain the possibility, and often it would be the case, that the producer contemplated a domestic market. In that case the supervisory power must be executed by the State; and the interminable trouble would be presented, that whether the one power or the other should exercise the authority in question would be determined, not by any general or intelligible rule, but by the secret and changeable intention of the producer in each and every act of production. A situation more paralyzing to the State governments, and more provocative of conflicts between the General Government and the States, and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine.

I am going to read next from the case of the United States against E. C. Knight Co. Before I read, briefly, from that decision I want to reply to an observation made by the junior Senator from Iowa [Mr. KENYON]. The junior Senator from Iowa seems to think this was a very discreditable decision and that it was not the law of the land; that the minority opinion was the sound rule that has since been followed. I think it has not been demonstrated by the junior Senator from Iowa that such is not the case. I suppose he objected to it because the Supreme Court decided that even a trust could not be lynched without regard to the Constitution; that you must lynch it constitutionally while you are at it. The junior Senator from Iowa [Mr. KENYON] seemed to think that because the Supreme Court held that the Constitution protected even a "trust" it is a discredited case. I have a very high regard for that Senator, but I hardly think he would want to put himself permanently in that position. The decision, in my judgment, is sound, it has never been overruled, and why the Senator will say it was "discredited" because it held something he did not believe in is more than I can understand. I read from the body of the opinion by Mr. Chief Justice Fuller, and there have been few abler lawyers on that bench than Mr. Chief Justice Fuller; I think that fact is conceded. I am not going to read very much of it, but it is sound law and it has never been reversed, and it is the law of the land to-day:

The argument is that the power to control the manufacture of refined sugar is a monopoly over a necessary of life, to the enjoyment of which by a large part of the population of the United States interstate commerce is indispensable, and that, therefore, the General Government in the exercise of the power to regulate commerce may repress such monopoly directly and set aside the instruments which have created it. But this argument can not be confined to necessaries of life merely, and must include all articles of general consumption.

The "necessaries of life" argument did not seem to appeal very much to the legal mind of the Chief Justice. The opinion continues:

Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture and is not a part of it. The power to regulate commerce is the power to prescribe the rule by which commerce shall be governed, and is a power independent of the power to suppress monopoly. But it may operate in repression of monopoly whenever that comes within the rules by which commerce is governed or whenever the transaction is itself a monopoly of commerce.

It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the States as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality.

Then the Chief Justice cites a number of opinions sustaining that proposition——

Mr. KENYON. Does the Senator remember how many judges dissented in that case?

Mr. HARDWICK. I think there were three. I will turn to it.

Mr. KENYON. There was a dissenting opinion by Mr. Justice Harlan.

Mr. HARDWICK. Yes; there is a dissenting opinion by Mr. Justice Harlan. I will give the Senator the information in just a minute. Justice Harlan read the dissenting opinion. My memory was inaccurate about it. He was the only Justice who dissented as near as I can tell from a hasty examination of the case.

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER (Mr. POMERENE in the chair). Does the Senator from Georgia yield to the Senator from Iowa?

Mr. HARDWICK. I yield to the senior Senator from Iowa.

Mr. CUMMINS. I want to ask the Senator from Georgia rather an abstract question. He has appealed very eloquently and very strongly to the consciences of Senators in determining whether they shall vote for or against a law the constitutionality of which is questioned.

Mr. HARDWICK. If the Senator will pardon me, the constitutionality of which is doubted by the Senator himself.

Mr. CUMMINS. Well, that brings it right to the point of my question.

Mr. HARDWICK. That is the way I would state it.

Mr. CUMMINS. Does the Senator recognize the decisions of the Supreme Court of the United States as settling for Senators the meaning of the Constitution of the United States, or ought each Senator to apply or interpret the Constitution according to his original reasoning?

Mr. HARDWICK. The Senator, Mr. President, of course, asks a very profound question; one that it is difficult for me to answer offhand. I can give him, however, my own views about it. I have given some thought to the subject, and I admit I regard it as more of a moral question than anything else.

Mr. CUMMINS. It is an ethical question.

Mr. HARDWICK. I believe that the decisions of the courts—the doctrine of stare decisis—is binding only upon litigants. The business of the courts is not to make—although they sometimes seem to do it—laws, but to construe them. Their decisions are binding upon the great world of business and upon everybody within the jurisdiction of the court as to the meaning, construction, and intendment of those laws; but it seems to me that each legislator is bound to apply his own judgment as to what the Constitution of the United States means, and not to shift that responsibility to any judge, living or dead; to do what he thinks is right, provided his conviction is so profound, so fixed, that it does not yield to the persuasive influence of the logic and the reasoning of the court's decision. Now, I have answered the question so far as I can.

Mr. CUMMINS. The Senator has made a very plain answer.

Mr. HARDWICK. Mr. President, I am not going to read at any length from the so-called Lottery case—Champion against Ames—but there are merely one or two observations which I want to make about that case.

In the first place, I am glad that just as I was about to take up that case the Senator from Iowa [Mr. CUMMINS] propounded the question which he did. I have never believed the decision in that case was sound law. I have never seen the day when I felt like I had not enough doubt as to the soundness of the decision to refrain from embracing any of the doctrines that it establishes. I expect to be able to show the Senate later the evils that would flow from the principle laid down in the Lottery case. It was the beginning of all of our troubles on this subject, as the Senator knows, that in order to suppress one evil the Congress made this mistake, adopted this doubtful constitutional expedient, and got involved in all the morass of all these various other usurpations of power that Senators now cite as authority for this outrage, which simply shows how one wrong step leads to another and to many more; how when you have made one mistake it is difficult ever to retrace your way. I am afraid that if the Senator—assuming that he is for this bill—and other Senators who favor this bill have their way and pass this bill, in the years to come they will be just as sorry as I am that the lottery decision was rendered, and that they contributed to the taking of another step which of and in itself

amounted to little, so far as child labor itself is concerned, but which, by a deliberate abandonment of fundamental principles, contributed to the overthrow of all local self-government in this court. Against this danger it seems that the Supreme Court only can protect us, and I firmly believe it will do so.

Now, let us see. The language both of the House bill and of the Senate committee amendment, as I said in my opening remarks, is based somewhat on the language of the lottery statute, because the language of the bill is that any man who "offers to ship a lottery ticket in interstate commerce." Of course, the Senate committee amendment, barring the points of difference that have been already pointed out by both the Senator from Arkansas and myself, has the same scheme or plan of structure. It is evident that the lottery statute was drawn in that way. I have not taken the trouble to go back to the lottery statute to verify it, but the court says this in its opinion in the Lottery case:

But it is said that the statute in question—

That is, the lottery statute—

does not regulate the carrying of lottery tickets—

That is, the tickets themselves—

from State to State, but by punishing those who cause them to be so carried Congress in effect prohibits such carrying; that in respect of the carrying from one State to another of articles or things that are, in fact, according to usage in business, the subjects of commerce, the authority given Congress was not to prohibit but only to regulate.

It is apparent there that Congress adopted the same sort of a draft as the House proposed here; they punished people who undertook to ship through interstate commerce lottery tickets, just as the Senator proposes to do in this case, although, as I pointed out this morning, they did not punish the man who caused the lottery tickets to be printed for sending Sunday school tracts or Bibles that happened to be published in the same establishment in which the lottery tickets were printed. The committee amendment, however, has gone that far, and that is going some. The decision continues:

If a State, when considering legislation for the suppression of lotteries within its own limits, may properly take into view the evils that inhere in the raising of money in that mode, why may not Congress, invested with the power to regulate commerce among the several States, provide that such commerce shall not be polluted by the carrying of lottery tickets from one State to another? In this connection it must not be forgotten that the power of Congress to regulate commerce among the States is plenary, is complete in itself—

Following the language of the old decisions—

and is subject to no limitations except such as may be found in the Constitution. What provision in that instrument can be regarded as limiting the exercise of the power granted? What clause can be cited which in any degree countenances the suggestion that one may of right carry or cause to be carried from one State to another that which will harm the public morals? We can not think of any clause of that instrument that could possibly be invoked by those who assert their right to send lottery tickets from State to State, except the one providing that no person shall be deprived of his liberty without due process of law. We have said that the liberty protected by the Constitution embraces the right to be free in the enjoyment of one's faculties, "to be free to use them in all lawful ways."

That is, to live and work where he will and to earn his livelihood by any lawful calling or in any lawful way according to the laws of the community in which he resides.

I am not going to comment at length on this Lottery case. I want to point out that, however; and when that is stated I think the strongest thing has been said that can be said in answer to the various arguments and reasonings which are sought to be adduced from this Lottery case.

The court sustained the lottery statute on the ground that the lottery ticket itself was a part of the gambling paraphernalia; that it was a part and parcel of the system and scheme by which men gambled. Even the meager part of the opinion I have read shows on this theory—and I am going back to the Lottery case in just a moment—that since the power to regulate interstate commerce was given to Congress by the Constitution, the power to regulate it was taken from the States; and that therefore no State could protect itself by State law, by State authority, against the introduction within its borders of noxious products, of immoral and unsound articles. That is a distinction and difference that I am going to elaborate later. Senators know how the distinguished jurist rendering that opinion labored and labored, giving one excuse after another for it, trying to draw one fine-spun distinction after another, and that he finally said, "This decision is not to be taken as a precedent for anything; we are merely deciding about gambling now, and we do not know what the decision will be when we come to something else." I know my friend the junior Senator from North Carolina [Mr. OVERMAN] is going to comment at length on that decision, so I shall not take up any more time with it.

In the case of Adair *v.* United States (208 U. S., 161) it was held that—

The power to regulate commerce, while great and paramount, can not be exerted in violation of any fundamental right secured by other provisions of the National Constitution.

Probably within the principle announced by that decision lies the answer of such men as my friend from Iowa, to the proposition that it would be possible under the precedents made by legislation of this character for Congress arbitrarily to exclude from the channels of interstate commerce perfectly sound wheat, perfectly sound cotton, because of some whim that it might have on the subject or because of some reason which might honestly and really seem good to Congress.

Senators of that type say that the legislator that undertakes to do that will be confronted by the fifth amendment to the Constitution of the United States, and that he will find that he is depriving people of their property without due process of law, and that, construing the two sections of the Constitution of the United States in pari materia, both must be given effect, and that Congress can not be allowed to violate the fifth amendment in its regulation of commerce.

Now, I want to ask Senators who make that contention, if the article of commerce is inherently sound, if it is not unlawful in character, if it is a legitimate thing, if it is a piece of cotton goods, if you want to have cotton manufactures in mind, or a piece of woolen goods, if you want to think about the woolen mills—whatever it is into which labor has entered—if it is in and of itself sound and not deleterious, if it can do no harm to the consumer, why is it not true, by every principle laid down in the Adair case, that every protection given by the fifth amendment of the Constitution of the United States does not obtain with full force and vigor to control and limit the legislative power of the Congress?

Mr. President, I am not going to go through the decisions in all the cases which have been referred to; but in Hipolite Egg Co. against The United States, in Two hundred and twentieth United States, the pure-food law was sustained; but I point out to the Senate that in that case the articles themselves were inherently unsound and were in themselves deleterious. That is the vital difference between cases of that character and the proposed child-labor legislation; there is nothing wrong with the product of child labor, and it will do no harm in any State when it enters consumption; it will defraud nobody; it will cheat nobody; it will hurt nobody in any way, so far as the article itself and its sale and consumption are concerned. Therefore this is utterly different from any case cited by the distinguished Senators who hold the affirmative of this issue. The same thing is true in the case of the United States against The Lexington Mill & Elevator Co., decided in Two hundred and thirty-ninth United States.

In the case of Coppage against the United States, in Two hundred and thirty-sixth United States——

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER (Mr. HUSTING in the chair). Does the Senator from Georgia yield to the Senator from Iowa?

Mr. HARDWICK. I yield to the Senator.

Mr. CUMMINS. Before the Senator goes to the case he has just cited, I should like his opinion upon this matter: He has spoken about woolen goods and cotton goods both being sound, as they are. Does the Senator believe that we could pass a law which would prevent the shipment in interstate commerce of goods composed of cotton and wool without a label upon them?

Mr. HARDWICK. Oh, the Senator has misbranding legislation in mind.

Mr. CUMMINS. We have no such legislation as yet, I think.

Mr. HARDWICK. Oh, yes; we have had "misbranding" legislation.

Mr. CUMMINS. Could we pass a law prohibiting the shipment in interstate commerce of such goods without a label upon them showing the proportion of cotton and the proportion of wool? I suggest that, because a mixed product of that sort is just as sound and just as useful and much more common than either wool or cotton unadulterated.

Mr. HARDWICK. When I come to answer the question laid down by the Senator's colleague I will show what I think is the difference on that point. The desire in that case is to protect the consumer against misrepresentation, against being defrauded, against being cheated, which the State can not do, because it can not stop the shipment of such goods in interstate commerce; certainly not in the original package before delivery to the consignee; and, therefore, the Federal Government, the court holds, has a sort of a police power to exclude from interstate commerce unsound or illegitimate articles.

Mr. CUMMINS. But it is a legitimate object of commerce. It is a commodity or article of commerce which everybody recognizes, and that means this—and I should like the Senator to answer me if it be not so—that we can use the power to regulate commerce or the authority to regulate commerce in order to protect or inform people as to the contents of an article or a commodity which is perfectly sound and absolutely innocent.

Mr. HARDWICK. I say to the Senator very frankly that I do not believe we have any such power, if the article itself is sound, wholesome, and legitimate in character.

Mr. CUMMINS. I was sure the Senator would reach that conclusion——

Mr. HARDWICK. Yes; that is my opinion.

Mr. CUMMINS. Because it is logical.

Mr. HARDWICK. But I can draw a distinction, as I will show the Senator in just a moment, and a very pertinent distinction, between that question and the one involved in the pending bill.

Mr. CUMMINS. I am not asserting that they are exactly parallel.

Mr. HARDWICK. I will give the Senator the exact parallel and apply it to the given case. If that legislation is held constitutional, then undoubtedly it would be within the power of Congress, according to the decisions of the court, to say that articles produced by child labor and convict-made goods, in the same way, could not be transported through the agencies of interstate commerce unless they were so branded. That would be as far as that principle could be stretched; but I will not go into that, because I do not believe that that is sound. I do not think there is a doubt that it is not sound.

From the Coppage case I will read from one of the notes of the reporter—and the opinion bears it out exactly. Senators will remember that the Coppage case was a case in which they denied the right of the Legislature of Kansas, under the fourteenth amendment, to prohibit a man from joining a labor union. The Kansas law was upheld in the lower court, but the Supreme Court reversed the decision of the lower court. It was contended in behalf of that statute that a sound public policy fully authorized and fully justified such an enactment. On that contention the court said:

> Since a State may not strike down the rights of liberty or property directly, it may not do so indirectly.

Has Congress different power than the State in that respect? It has been asserted here that Congress has a perfect right, not only constitutionally, but morally, to do something indirectly that it has no pretension of right to do directly. I utterly dispute both propositions. The Supreme Court of the United States says a State can not do it. I quote again from the Coppage case:

> Since a State may not strike down the rights of liberty or property directly, it may not do so indirectly, as by declaring in effect that the public good requires the removal of those inequalities that are but the normal and inevitable result of the exercise of those rights, and then invoking the police power in order to remove the inequalities, without other object in view.

I am not going into the details of all of these decisions, but in the case of Weber against Freed, to which some of the Senators have referred, decided December 6, 1915, it was held that Congress had the power to prohibit any foreign importation, but to a lawyer the difference is so manifest and so wide, that I do not think I will dwell on it at all.

The power of Congress over interstate commerce and over foreign commerce is contained in the same clause of the Constitution and in the same words; but, because of its sovereignty as a nation, and because there are no other clauses in the Constitution itself which modify the power with respect to foreign commerce, that power is absolute and is not limited by any other power in the Constitution. The exact reverse is true with respect to interstate commerce. Not only are the reserved powers of the State under the tenth amendment to the Constitution and the due process of law amendment, known as the fifth amendment, limitations upon the interstate-commerce power, but it seems to me there can be no serious dispute on the question of the distinction between the power of Congress with respect to foreign commerce and its power with respect to commerce between the States.

Mr. CUMMINS. Mr. President——

Mr. HARDWICK. I yield to the Senator.

Mr. CUMMINS. I would not say that there is no difference; but the Senator from Georgia does not mean to say, I am sure, that the fifth amendment to the Constitution does not apply to or limit the power of Congress in dealing with foreign commerce?

Mr. HARDWICK. Undoubtedly; I do not think it does. That is my contention. It might in behalf of a citizen of the United States, but certainly it does not in behalf of a citizen of a foreign government.

Mr. CUMMINS. Certainly not——

Mr. HARDWICK. That is exactly what I meant to say.

Mr. CUMMINS. That is all the fifth amendment applies to anyhow—a citizen of the United States.

Mr. HARDWICK. I know; but I say the power to forbid importations, so far as its exercise affects a person who is not a citizen of the United States, is absolutely uncontrolled and uninfluenced by anything else.

Mr. CUMMINS. I quite agree to that; but so far as a citizen of the United States is concerned——

Mr. HARDWICK. Oh, yes; the fifth amendment would apply equally in the one case as in the other.

Mr. CUMMINS. It would apply in respect to foreign commerce as well as interstate commerce.

Mr. HARDWICK. Undoubtedly. I am glad the Senator does not misunderstand me about that. It is exactly the same if the rights of citizens are involved in either case; but it is very different if the rights of citizens of the United States are not involved in the question of foreign importations. So much for that distinction.

There are two cases in the books, fairly recent cases, which, in my judgment, absolutely show what the temper and the trend of the recent Supreme Court decisions are. They construe the lottery decision, and one of them especially lays down as clear as the sunlight the rule of law as applicable to this case, and unmistakably defines the limits of constitutional power.

In the case of Hoke against United States, decided in Two hundred and twenty-seventh United States, on February 24, 1913, the court in a very labored decision, undertaking to show that the Congress was supplementing the police powers and the local activities of the several States and local communities, held the white-slave law constitutional. It was held constitutional on the theory, when you boil the opinion down, that because when the woman arrives at a given point, her destination, one of the results and purposes of her importation from one State into another, is an intended violation of the criminal laws of the State into which she is imported. It was, therefore, held in that case that Congress had the power to say that the agencies of interstate commerce should not be employed to bring people into a State for the purpose of violating the laws of that State when they arrived there. That is a very roundabout, tortuous, and unsatisfactory decision, to my mind, and yet that is finally what the principle of the opinion is based upon. I call the attention of Senators again to the fact that the court claims that Congress has the right to protect the citizens of a State from the importation of articles, or persons even, that will be injurious to them, because the States can not stop such importation at all under State law unless Congress shall intervene and do so.

Mr. BRANDEGEE. Mr. President, will the Senator pardon me an interruption?

Mr. HARDWICK. Certainly.

Mr. BRANDEGEE. In that case the person transported was being transported for an immoral purpose, and the person transported was an immoral person.

Mr. HARDWICK. Yes.

Mr. BORAH. Well, Mr. President, what possible difference could that make? It simply emphasizes the fact that the Supreme Court undertook to invoke the police power under the commerce clause.

Mr. HARDWICK. If the Senator will allow me, perhaps I did not make myself plain.

Mr. BORAH. The Senator has been making a splendid argument. I am not complaining of that.

Mr. HARDWICK. This is what I meant, if the Senator will let me repeat it. I meant that in every one of these cases where the court have upheld such statutes, they have simply done so because they say that Congress must have the power to protect a State from the importation into her borders or limits of articles through interstate commerce, the State itself being powerless to do it, that are injurious to her health or morals. That is the doctrine, as I understand it. I do not think it is sound, but that is the principle on which it rests.

I think I can come to this matter in a different way by answering a question propounded by the junior Senator from Iowa [Mr. KENYON] in his speech the other day. In that speech the junior Senator from Iowa said this:

> Those in support of a national child-labor law, however, do not need to go to the extreme of Senator Beveridge's position. There is very late authority for the doctrine that if the carrying of certain articles in interstate commerce results in a use of those articles deleterious to public welfare Congress has the right to prohibit such transportation. These authorities go so far as the consideration of the question

of the use by the consumer. I will agree that they do not go to the question of the production, and that is the only difference in the contention for a national child-labor law.

Now, take it and confine it to consumption. Congress exercises the power to protect a State against the importation of something which when introduced into consumption within its borders or limits is dangerous to public health, to public safety, or to public morals, on the theory and for the reason that the State is utterly helpless—it having delegated to the General Government, in common with the other States which form the American Union, its power over interstate commerce—to prevent the importation of such dangerous or unwholesome or unsound products; and on that theory every one of these cases, except, possibly, the misbranding cases, to which the senior Senator from Iowa [Mr. CUMMINS] referred just now, rests, in my judgment. But when it comes to production it is different. What does it matter to the people of the Senator's State, the people of Iowa, as far as their own material well-being is concerned, as far as their own safety is concerned, as far as their own comfort is concerned, whether children work in Georgia or in North Carolina or in Florida? The article we send you is sound. It will not kill you. It will not hurt you. It will not cause the commission of crime. It will do you no harm; but if anybody is harmed, it is us, in its production.

The Senator sees the line I am trying to draw. You have nothing to do with that. That is local self-government. Our people at home, and each State in this American Republic, know, or ought to know, best what they want to do with their own and for their own; and so long as they do not injure other States or the people of other States, they have the exclusive right to determine their own policy.

I hope I have made my position plain. That is the point I have been trying to make in all this discussion.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER (Mr. BRADY in the chair). Does the Senator from Georgia yield to the Senator from Idaho?

Mr. HARDWICK. I yield to the Senator.

Mr. BORAH. So far as the white-slave act was concerned, the enforcement of the law could be as thoroughly left to the State as the control of the child-labor law.

Mr. HARDWICK. No.

Mr. BORAH. If the parties are brought into the State for evil purposes, they are within the State. They can be prosecuted under the criminal law. They can be taken charge of by the criminal law. They are completely within the control of the State.

Mr. HARDWICK. Oh, I think the Senator is right in that matter. I voted against that bill just for that reason. I had no earthly idea that it was constitutional, and, of course, the apt rejoinder would be—I have been expecting it here all day—that I may be equally mistaken about this, which is quite conceivable.

Mr. BORAH. It seems to me that the Supreme Court did not lay down the rule that it did in the white-slave case because the persons were being imported into the State and the State was helpless to protect itself, but on the broader ground that the National Government could deny the channels of interstate trade to any immoral purpose or immoral practice or anything which was deemed to be contrary to the good morals or health of the people.

Mr. HARDWICK. At the present time I am not going to undertake to go into that in detail. I got the other idea very strongly from some of the expressions in the opinion—that they were going to aid the State authorities, but they rather begged the question by saying, "We are not in conflict in this matter"—the Senator remembers that part of the decision, I am sure—"with the local police authorities. We are helping them. We are aiding them. We are supplementing them in what we do." I admit that it is all as weak as water, according to my opinion; but still that is the theory on which they put it.

Now, let us see. I do think, however, that there is one decision—and I hope I will have the attention of the Senator from Idaho, particularly with reference to that case—which points out very plainly the difference between what can be done and what can not be done under these decisions and where the line of demarcation is to be drawn.

At the October term, 1912, the case of McDermott *v.* The State of Wisconsin (228 U. S., 115) came on to be argued, and it was decided on April 7, 1913, just about 10 days after the White Slave case, the Hoke case, was decided; and that fact must be borne in mind in considering the meaning of this decision. I want to invite the particular attention of the Senate to just what was said in this decision. It was a very carefully considered opinion. It looks to me like it lays down a rule which seems to be pretty clearly established on this subject—troublesome and perplexing as it has been to the court itself. In that opinion Mr. Justice Day says:

> That Congress has ample power in this connection—

That is, the regulation of interstate commerce—

> is no longer open to question.

I will say that this was a pure-food and drugs case. The articles were inherently unsound. I state that so that you may get the proposition clearly in your minds.

To return to the opinion:

> That Congress has ample power in this connection is no longer open to question. That body has the right not only to pass laws which shall regulate legitimate commerce among the States and with foreign nations, but has full power to keep the channels of such commerce free from the transportation of illicit or harmful articles, to make such as are injurious to the public health outlaws of such commerce and to bar them from the facilities and privileges thereof.

In other words, the court in that decision clearly draws this line—that as to legitimate articles of commerce, articles of commerce inherently sound, articles of commerce that are not unlawful in character, articles of commerce that work no harm in their use when they are sent to the people of other States and enter into consumption in those States among the people who use them—there can only be regulation by Congress, and the power to prohibit can only be applied to illicit or unsound articles.

That is the doctrine. It is perfectly plain to me. I do not approve all the meanderings by which the court adopted it. I think the court has gone further than it ought to have gone, but I want to repeat it, because unless my mind is utterly in error about this entire question it seems to me to be the line that they have drawn, and drawn with unmistakable clearness. Quoting again from the opinion:

> That body has the right not only to pass laws which shall regulate—

Not prohibit, but regulate—

> legitimate commerce among the States and with foreign nations, but has full power to keep the channels of such commerce free from the transportation of illicit—

Evidently they had the white-slave business in mind there—

> or harmful articles, to make such as are injurious to the public health outlaws of such commerce and to bar them from the facilities and privileges thereof.

Mr. BORAH. Mr. President, manifestly the Supreme Court in the White-Slave case went beyond that rule.

Mr. HARDWICK. This decision was rendered 10 days afterwards, and they cite the white-slave decision in this case. I think, under its reasoning, the white-slave decision is easily accounted for, as I have already pointed out.

Mr. BORAH. Exactly, but it was upon a different state of facts, and manifestly they went beyond that in the white-slave case. Let me call the Senator's attention to an illustration.

Mr. HARDWICK. If the Senator will pardon me, I am almost worn out, and I shall be glad to discuss this matter with him at some other time.

Mr. BORAH. I know the Senator is tired, and I beg his pardon.

Mr. HARDWICK. I have occupied the floor much longer than I intended. I appreciate the Senator's interruptions, and his great courtesy, and his aid to me in this debate, and I appreciate the attention and aid of other Senators, but at present I think I shall suspend.

I desire to thank the Senate and Senators who have honored me with their presence and their attention to the remarks I have made in this matter. I have a profound, fixed conviction that this legislation is in violation of the Constitution of my country and of my oath of office. Therefore it will be impossible for me ever to support it, or to fail to do everything in my power in an honorable manner to defeat it.

During the delivery of Mr. HARDWICK's speech,

Mr. CLARKE of Arkansas. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Bankhead	James	Penrose	Smith, S. C.
Borah	Johnson, Me.	Pittman	Smoot
Brady	Johnson, S. Dak.	Poindexter	Sterling
Brandegee	Kenyon	Ransdell	Taggart
Clapp	La Follette	Robinson	Thomas
Clark, Wyo.	Lane	Saulsbury	Thompson
Clarke, Ark.	Lee, Md.	Shafroth	Townsend
Cummins	Lewis	Sheppard	Vardaman
Curtis	McCumber	Sherman	Wadsworth
du Pont	Martine, N. J.	Shields	Walsh
Fletcher	Oliver	Simmons	Warren
Hardwick	Overman	Smith, Ariz.	Weeks
Hughes	Page	Smith, Ga.	Williams

Mr. JAMES. I have been requested to announce that the senior Senator from Oregon [Mr. CHAMBERLAIN] is absent on official business.

Mr. BANKHEAD. I desire to announce the absence of my colleague [Mr. UNDERWOOD] on account of sickness. This announcement may stand for the day.

The PRESIDING OFFICER. Fifty-two Senators having answered to their names, a quorum is present.

After the conclusion of Mr. HARDWICK'S speech,

Mr. BORAH. Mr. President, I will ask the Senator in charge of the bill if he desires to proceed with the bill this evening?

Mr. ROBINSON. I should like to proceed; and if the Senator is ready to go ahead now, I should be glad to have him do so. I think there is no one on this side of the Chamber who wishes to speak at this time.

Mr. GALLINGER. Mr. President, in view of the vacant seats, I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Harding	Lee, Md.	Sheppard
Bankhead	Hardwick	Lewis	Simmons
Borah	Hollis	Martine, N. J.	Smith, Ariz.
Brady	Hughes	Norris	Smith, S. C.
Brandegee	Husting	Oliver	Smoot
Bryan	Johnson, Me.	Overman	Stone
Chamberlain	Johnson, S. Dak.	Page	Thomas
Clapp	Jones	Pomerene	Tillman
Cummins	Kenyon	Ransdell	Vardaman
Dillingham	Kern	Reed	Wadsworth
Fletcher	La Follette	Robinson	Walsh
Gallinger	Lane	Shafroth	Williams

Mr. ROBINSON. I desire to state that the senior Senator from Maryland [Mr. SMITH] is absent on important business.

The VICE PRESIDENT. Forty-eight Senators have answered to their names. There is a quorum present.

Mr. BORAH. Mr. President, the Senator in charge of the bill is desirous of making progress. No one else is ready to proceed, and therefore I shall undertake to say what I have to say in regard to the constitutionality of the measure before us. I shall be brief, if I am not detained by interruptions. The junior Senator from Iowa [Mr. KENYON] some time ago discussed this matter at length and in all its phases, and the junior Senator from Arkansas [Mr. ROBINSON], who has charge of the bill, has made a very elaborate presentation of it, these two Senators presenting the view that the bill is constitutional. We have also listened to an exceptionally able and earnest speech upon the part of the junior Senator from Georgia [Mr. HARDWICK] advancing the other view. One might very well content himself ordinarily with casting his vote and relying upon the arguments already presented. But there is one feature of the question which, while it has been advanced in the way of argument, seems to me not to have been amplified as fully as the authorities justify; and it is the legal principle upon which, in my judgment, the bill must be sustained, if it is sustained at all. I shall not seek to advance either new or original arguments, but to amplify or enlarge to some extent upon principle so ably advanced by others.

The subject of interstate commerce is given over entirely to the National Government. Whatever from time to time it may be deemed wise and necessary to do in the treatment of this subject must be done by Congress. The power to regulate commerce among the several States is vested in Congress as completely and effectively, as fully and absolutely as it would or could be in a single State or sovereignty having a constitution with the other provisions of our National Constitution. As has so often been said, the power is plenary, complete within itself and may be exerted by the Congress, and by the Congress alone, to its utmost. Within the commerce clause itself we find no limitation, no circumscribing of the power. Whatever limitation there may be upon Congress must be found in some other provision or provisions of the Constitution, and perhaps I ought to say in the fundamental principles of regulated and constitutional government. For I take it that aside from the express provisions of the Constitution that the nature of society and of regulated government prescribes some limits which the legislative power may not transcend. In other words, there is no place in the fabric which the fathers constructed for the lodgment of purely arbitrary power. But aside from such limitations as may be found in other provisions of the Constitution and those fundamental principles of organized society which prohibit the exercise of purely arbitrary power, the power of Congress over interstate commerce is complete and without limitation.

This principle has been so often announced by the Supreme Court, and referred to already by able Senators, that I need not take the time which otherwise I should have taken to call attention at any length to the language of the Supreme Court in defining this unlimited power which Congress has over the interstate commerce. It is a subject matter which has been turned over completely to one sovereignty, and that sovereignty is the National Government. Whatever any sovereignty might do, having a constitution with similar provisions to our Constitution, with reference to this subject matter the National Congress may do with reference to this subject matter which has been turned over to it.

In the case of Hoke against United States, commonly known as the white-slave case (227 U. S., 308), it is said:

> Congress is given power to regulate commerce with foreign nations and among the several States. The power is direct; there is no word of limitation in it, and its broad and universal scope has been so often declared as to make repetition unnecessary.

At the very beginning of the Government, in the case of Gibbons against Ogden (9 Wheaton, 1), the Supreme Court said:

> This power, like all others vested in Congress, is complete in itself, and may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.

In the case of In re Rohan (140 U. S., 545), the court said:

> The framers of the Constitution never intended that the legislative power of the Nation should find itself incapable of disposing of a subject matter specifically admitted to its charge.

Disposing of it in all its fullness and completeness for the interest of the Government or the sovereignty which is to exercise the power.

Necessarily, Mr. President, there must come a time in the regulation of interstate commerce when the subject of the public welfare and morals and the health of the people may be involved. Necessarily there must come a time when the question shall arise whether a regulation relates alone to commerce or whether it has to do also with the morals and the health of the people. If that question should arise with reference to interstate commerce—if the question of the public welfare or the public interest or the health or the morals of the people should arise—what sovereignty and what power alone may deal with it? Manifestly the States can not deal with it, and manifestly, if the subject matter is ever to arise and to be dealt with, it must be dealt with by the only sovereign power which can deal with the subject matter.

The bill before us, in my judgment, has its origin not in a desire to serve commerce, technically and properly speaking, but in a desire to serve humanity, and therefore has to do with the morals and the citizenship of the country.

The question which is presented to us, therefore, in the consideration of this bill is whether or not the commerce clause is sufficiently broad to enable the Congress to take into consideration those questions of the health and morals of the people when they relate in any reasonable way to interstate trade. The question is, in other words, May Congress, with its power to regulate commerce, make laws which have the quality of police regulations? Can we in regulating commerce and under our power to regulate commerce so regulate it as to serve the health, the morals, and the welfare of the community?

Aside from the question of this power to regulate commerce, to augment or to keep the channels of interstate trade free from obstruction, aside from the power to build up and aid interstate commerce, has it in the regulation of commerce the additional power to enact such legislation as relates alone to police regulation or to the police powers?

If we should find, Mr. President, that the Congress of the United States has no such power it is mere sophistry to undertake to sustain this bill upon the theory that it is in augmentation or in aid of commerce, technically and properly speaking. Unless the courts have gone so far as to say that with reference to this subject matter, to wit, interstate commerce, that we may exercise all power which has for its object and purpose the protecting of the channels of interstate trade from being used in a way which is deemed to be detrimental to the public interests or to the health or to the citizenship of the country, in my judgment we can not sustain it at all.

It is idle to say, Mr. President, that it is in aid of commerce per se to shut out an article because it has been manufactured by a child; it must have some broader purpose than to serve economic interests alone. It is idle to say that it is an aid or augmentation of commerce to shut out articles which have been manufactured in the same establishment as articles which have been manufactured by a child under a certain age. So we must meet the question squarely and deal with the issue as it is presented, and ascertain if we may whether or not the National Government possesses the police power with reference to the channels of interstate trade.

May I pause for a moment to inquire more particularly what is the police power? What is the nature of it? When we speak

of the police power of the State or of any sovereign we mean nothing more than the power to legislate concerning persons and things. If a particular subject matter has been turned over to the National Government, then the police power of the National Government with reference to that subject matter is no more than the power to legislate concerning things and persons as they have connection with this particular subject. This subject matter, interstate commerce, having been turned over absolutely to the National Government, does not all the attributes of sovereignty go with the power?

In the case of Munn *v.* Illinois (94 U. S., 125):

> The police powers are nothing more or less than the powers of government inherent in every sovereignty * * * that is to say, * * * the power to govern men and things.

In other words, it is the discretion of sovereignty with reference to any subject matter upon which that sovereignty may act in legislation or in matters of government, its regulation and control of a subject in whatever way becomes necessary for the public good. If a particular sphere is wholly within the sovereignty of the Federal Government, it must follow that it has the power to regulate for and in accord and in harmony with the public good.

The Supreme Court has further said in the case of Railway Co. *v.* Husen (95 U. S.):

> By the general police powers of the State persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the community.

If this be the general police power, would not such police power necessarily attach wherever and whenever sovereignty was authorized to deal with a particular subject? Such sovereignty would not possess general police power, but with reference to the subject matter over which it was authorized to act. It would necessarily be permitted to do any and all things necessary to secure the general comfort, health, prosperity, morals, and safety of the people.

I do not claim, of course, that the National Government posseses a general police power. I claim that it possesses the police power relative to the particular subject matter which is turned over to it for legislation. Of course, the general police power belongs to the State, and the National Government possesses no police power except that which is drawn to it or which draws to itself by reason of the particular subject matter having been given over to it for legislation.

Mr. BRANDEGEE. Mr. President——

Mr. BORAH. I yield to the Senator.

Mr. BRANDEGEE. It does not seem to me that the qualification the Speaker has made, which I suppose was an extract from the court's decision, would limit the power of Congress, if it has a national police power with relation to the subject matter, the power being directly conferred upon Congress by the Constitution, because the Senator says he does not claim that the National Government has general police power but only police power in connection in this instance with the regulation of commerce among the States. If they have that national police power in connection with the regulation of commerce among the States, what is the limit to which Congress may go in regulating the affairs of the State and of the people within the State? Congress having the discretion itself to say what it does is for the benefit of the people of the several States, can it not prescribe anything in relation to the conditions and circumstances of manufacture in the States as a standard, and then prohibit the articles produced in those States from entering into interstate commerce unless they are manufactured in accordance with the standards set up by Congress, if the Senator's contention is correct?

Mr. BORAH. The Senator has presented a question which would involve a definition of the police power; that is, the extent to which any sovereignty might go in the regulation, for instance, of intrastate commerce. The Senator might ask me to what extent may the State government go in prohibiting the channels of intrastate commerce from being used in certain ways. I would be unable to answer that. There has never been a definition of the police power. It is to some extent, as was said by Justice Holmes in a late decision, what the community predominantly comes to consider to be to the benefit of the community generally. The Supreme Court has never undertaken to define it with reference to the State, and of course I would be unable to say to what extent the Supreme Court might go in the regulation of commerce in the control of these matters which it deemed to be for the interest of the public welfare or public morals.

But this is my contention, the Senator will bear in mind. The National Government has been given the power to regulate commerce. That is a substantive grant. With it goes the implied power to so regulate as to serve the general community, its health, its morals or its public interest. The limit of that may be different under different circumstances, because there can be no possible doubt that is what is deemed to be a regulation under the police power or a reasonable exertion of police power to-day may be different from what it will be 25 years from now. The police power is after all the subjecting of all persons and things to what is deemed to be the interests of the entire community, and the interests of the community may be different in one decade from what they are in another.

Mr. BRANDEGEE. I presume the Senator would agree that the prescribing of the hours during which children might work in the several States and the ages at which they might work would be an exercise of the police power.

Mr. BORAH. Yes, sir.

Mr. BRANDEGEE. If that is so, and of course it is so, and if Congress in the regulation of commerce under the Constitution among the States can exercise police power to that extent, I can not conceive of the police power which Congress could not exercise in the several States. If the exercise of the police power as defined by the Supreme Court and cited by the Senator is the power to legislate concerning men and things, I can not see why in regulating commerce on the pattern upon which this bill is fashioned Congress can not prescribe everything that is now left to State laws to prescribe and to put an inhibition on the products of any State from entering into interstate commerce unless they operate their State and the lives of their people to conform to standards in the discretion of Congress as set up by it.

Mr. BORAH. As I proceed with the authorities, I will undertake to differentiate with reference to the limits to which Congress may go.

Mr. CLAPP. If the Senator will pardon an interruption, would there not be an analogy found by taking the opinion of Justice Holmes as the basis with reference to what is the State police power, being measured somewhat by the general sentiment of the community, and with reference to the application of the police power to the Federal Government to be the general sentiment and purpose of the people of the Nation? It strikes me that there is an analogy on which we may well found the supposition that this law would be recognized as valid.

Mr. BORAH. I think that is an illuminating suggestion, and I thank the Senator.

Let me in further response to the Senator at the present time call his attention to the fact that the Supreme Court has never undertaken to define the police power either with reference to the State or National Government. But I think the Senator from Connecticut will agree with the proposition that there must necessarily come a time in the regulation of commerce when something aside from the mere augmenting or aiding of commerce would be involved. That is to say, there are things so pronouncedly bad, so pronouncedly immoral, that the channels of interstate trade ought to be shut to them. That being true, who would exercise that power? Undoubtedly the State can not exercise it.

If we concede that, there must come a time when the channels of interstate trade are being used in a way so pronouncedly against the public interests or the public morals or the public health that it must be dealt with, the National Government must deal with it, and when it does, it is exercising the police power with reference to that subject matter. The State can not do it; some sovereignty must do it; no one but the National Government can do it.

Mr. BRANDEGEE. The Senator has asked me that question. Of course, I concede that already that has been done, and sustained by the Supreme Court in relation to articles in themselves noxious or dangerous to the public health or the public morals. The distinction that I think there is between the principle involved in the pending bill and all the other cases that have been decided along these lines is that this bill does not propose to deal with the article transported. It prohibits the transportation of the article absolutely unless made in accordance with rules set up by Congress in the State of its origin. I think there is a distinction between those cases and this one.

Mr. BORAH. Perhaps we can deal with that subject better when we come to analyze those particular authorities.

Mr. BRANDEGEE. I would have not made the statement, except that the Senator directed his remarks to me.

Mr. BORAH. I am not objecting to the interruption at all.

Justice Holmes in a late case, Noble State Bank against Haskell, speaking for the entire court, said, in a general way, that the police power extends to all the great public needs:

> It may be put forth in aid of what is sanctioned by usage or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare.

Now, certainly, it would be admitted that if that is a definition of the police power we must exercise such power as that with reference to the regulation of commerce, and, as I said a moment ago, if it is to be exercised at all in reference to interstate commerce it must be by the National Government and not by the State government.

Whatever power the State may see fit to exercise in the regulation of intrastate commerce is exercised by virtue of its police power; in other words, in regulating the commerce entirely within a State it does so in exercise of the police power of the State. Now, the National Government may exercise the same power and the same control and make the same regulations with reference to interstate commerce that the State government may over domestic or intrastate commerce. If we call one the police power, what is the other? Is it not the police power of respective sovereignties over their respective subjects? Is not, after all, this subject a simple one which consists of the exercise of the police power of the sovereignty over the particular subject matter which has been assigned to that sovereignty?

Having ascertained, Mr. President, what the police power is, does Congress possess that power with reference to interstate commerce? I wish to quote here a brief statement from Rufus Choate, made in the Senate March 14, 1842. It illustrates my contention that for a long number of years we have been exercising with reference to interstate commerce a power which is no other than the police power; that while it has not been so designated and is not now designated in so many terms as being the police power, in its essential nature it was and is the police power. Mr. Choate says:

> The framers of the Constitution meant to clothe you with the power of disarming it (commerce) of all the evil and extracting from it all the good to which the wisdom of the Government is equal. They could not have intended to do anything so absurd as simply to authorize and require you to promote, enlarge, or advance commerce per se and in the abstract without regard to its quality; to its adverse or its propitious influence upon the prosperity, the morality, the health, and the industry of the people; to the goods it brought home; to the goods it carried away; the national character of the tonnage it employed and of the labor it rewarded. (Rufus Choate in the Senate, Mar. 14, 1842.)

The language of the distinguished Massachusetts lawyer is to the effect that it was not designed that Congress should be limited to the mere question of dealing with this subject matter as commerce per se technically and properly speaking, but it should operate in the whole realm of legislative regulation where the public interest is involved, the public health involved, or the public welfare involved.

The distinguished Senator from Georgia [Mr. HARDWICK] awhile ago referred to the eminent constitutional lawyer, Judge Cooley, and he is, of course, among the most distinguished of our constitutional authorities. Mr. Cooley said in his Constitutional Limitations:

> It is not doubted that Congress has the power to go beyond the general regulations of commerce which it is a custom to establish and to descend to the most minute directions if it shall be deemed advisable and that to whatever extent ground shall be covered by those directions the exercise of State power is excluded. Congress may establish police regulations as well as the States, confining their operations to the subjects over which it is given control by the Constitution.

It seems to me if that be sound—and I take it that his opinions are generally credited as sound upon such subjects—Congress may establish any regulation which it deems to be in the exercise of police regulation, so long as it touches the subject matter of interstate trade. If Congress comes to the conclusion that the channels of interstate trade are being used in such a way as to injure the public interests or the public morals or the public welfare, it may deal with that subject matter just the same as if the States should come to the conclusion that the intrastate channels of trade were being used to the detriment of the public interest or of public morals.

Mr. OVERMAN. Wheat being a subject of interstate commerce, does the Senator think that under the police power this Government would have the right to say that no person shall work more than eight hours in the wheat fields of Minnesota, for instance?

Mr. BORAH. I do not know that I caught the Senator's question. He referred to wheat and then spoke about labor, as I understood it.

Mr. OVERMAN. I referred to the regulation of the hours of labor in the wheat fields of Minnesota; and I asked, Could Congress prohibit wheat from going into interstate commerce if produced by labor in the wheat fields of Minnesota working more than eight hours a day?

Mr. BORAH. Mr. President, I would have to answer that by saying that, in my opinion, neither the State nor the National Government could undertake the exercise of that kind of power and call it a police power.

Mr. OVERMAN. Why not?

Mr. BORAH. Because it would be deemed to be beyond what has been considered the public interest or the public welfare or the public health, and would not come within the limits of the police power.

Mr. OVERMAN. What would be the difference between that kind of a law and a law prohibiting the working for more than eight hours in a mill?

Mr. THOMAS. Mr. President, let me ask the Senator, if I may, whether his argument does not necessarily involve the power of Congress to provide, if it desired to do so, that no wheat or other agricultural product shall enter into interstate commerce which is produced by child labor working more than eight hours a day?

Mr. BORAH. Does the Senator from Colorado put that question to me?

Mr. THOMAS. Yes.

Mr. BORAH. Well, my opinion is, Mr. President, that conditions might be such that that would be deemed to be within the police power of the National Government. Of course, I can not conceive of a condition of affairs arising in which it would be deemed to be to the public detriment that a child should not work in the wheat fields more than eight hours a day. Many questions might be asked upon the border line between what is a proper police regulation and what is not, and no man can tell unless the facts are presented to him in their entirety, whether it is contrary to public interests or to the public welfare or not.

In my opinion, if the child-labor question had been presented to Congress or to the Supreme Court 50 years ago, before factories became so universally established, and before the effect of child labor in those factories had been discerned, before it was believed to be contrary to the building up of the best citizenship of the country, we would likely have been unable to satisfy either Congress or the Supreme Court that this was a proper exercise of police power. Now, such conditions might arise and prevail that the working of children more than eight hours a day in a wheat field might be deemed destructive of their health and their development; if so, then if the products of their labor went directly to the channels of interstate commerce it could, under the principle for which I am contending, be inhibited to commerce.

Mr. OVERMAN. Mr. President, so far as the sentiment is concerned, there is now a propaganda going on in this country proposing, as I understand, that an amendment be added to this bill that children shall not work in the fields for more than eight hours.

Mr. BORAH. Yes. Well, I can understand that propaganda might be going on, but I do not believe that it is very well founded.

Mr. OVERMAN. Mr. President, I know a Senator on the other side of the Chamber who has some letters from women asking that such an amendment be adopted to the bill.

Mr. THOMAS. Mr. President, if the Senator will permit me, for I do not intend to interrupt him at all——

Mr. BORAH. I am very glad to yield to the Senator.

Mr. THOMAS. I introduced an amendment this morning along the lines suggested by the Senator from North Carolina [Mr. OVERMAN], the purpose of which was to call attention to certain evils of child labor in other departments of industry, with a view of endeavoring, if possible, to so provide in the law as to meet all the conditions which invoke this exercise of congressional power.

Mr. BORAH. Mr. President, if the Senator from Colorado please, of course the question presented to me by the Senator from North Carolina and the other questions are questions which require of me a definition of the police power of the Government, rather than a discussion of the question which I am now presenting, as to whether or not the National Government possesses the police power with reference to interstate commerce. I have never known a court to undertake to define what the police power is within limitations or laying down rules by which it could be determined definitely, and I certainly would not, in the presentation of this question, deem that it devolved upon me or upon any of the supporters of this bill, to define in all its applications the police power. What I say is, that whatever the police power is, and the extent to which it may go, the National Government does possess it with reference to the channels of interstate trade.

Mr. BRANDEGEE. Mr. President, if the Senator from Idaho will permit me right there, I wish to say that it seems to me, even conceding the statement of the Senator, to wit, that in the regulation of commerce among the States, Congress must possess some power, at least, in the nature of police power; the Senator is in danger of confusing that with the regulation

of production. Granted that the Congress may have authority to exercise all regulations about the subject that it is authorized to legislate upon, to wit, commerce among the States, is that the same thing as setting up a standard of production in the State of origin, and then prohibiting interstate commerce in articles in the State of origin that do not come up to a standard of production fixed by Congress?

Mr. BORAH. Mr. President, as I said a moment ago, I am going to undertake to analyze some of the authorities in a few moments, to see the extent to which we may go, but in the meantime let me say that long years ago when that question was raised——

Mr. BRANDEGEE. In the Knight sugar case.

Mr. BORAH. And prior to that time—during Marshall's time—in which the subject of the exercise of this power and the abuse of it was discussed, Chief Justice Marshall said that the only remedy for that, and the only safety that the people had against the abuse of such power, it being in existence, was the change of their public representatives. In other words, the liability to abuse is no argument against the existence of the power.

Mr. SMITH of Georgia. Mr. President, will the Senator from Idaho allow me to ask him a question?

Mr. BORAH. I yield.

Mr. SMITH of Georgia. I do not ask the Senator to answer me at once, but I do ask him during his argument, to which I am listening with interest, to say if it is not a reasonable claim that the police power must be incident to the interstate commerce itself and connected with transportation from State to State, or police responsibility rather than a responsibility entirely independent of transportation?

Mr. BORAH. I think that is true. Prof. Freund, in his treatise on the police power, says:

> It is impossible to deny that the Federal Government exercises a considerable police power of its own. This police power rests chiefly upon the constitutional power to regulate commerce among the States and with foreign nations, but not exclusively so. * * * It must now also be regarded as firmly established that the power over commerce, while primarily intended to be exercised in behalf of economic interests, may be used for the protection of safety, order, and morals.

Would there be any question of the power of Congress to prevent the running of freight trains on Sunday in the interest of the health and morals of the people? If so, would not this clearly be an exercise of the police power?

Mr. WORKS. Mr. President——

Mr. BORAH. Just a moment. The police power has been held to be an attribute of sovereignty possesed by every sovereign State and a necessary attribute of every civilized government. In my judgment, the police power necessarily inheres in any government concerning that subject matter over which that Government exercises complete sovereignty. In other words, the police power is but another name for that authority which resides in every sovereignty to pass all laws for the proper regulation and control of any subject matter committed to that sovereignty in the interest of the health, the morals, and the public welfare of the community.

Mr. WORKS. Mr. President, the quotation the Senator has read touches a phase of this question about which I should like to be informed. It refers to the power of the Government to regulate the running of freight trains, for example, as a part of its police power. Does the Senator think it would have that power where the freight train was operated over a railroad running exclusively within a State?

Mr. BORAH. No; certainly not.

Mr. WORKS. Then it must be connected with interstate commerce.

Mr. BORAH. Certainly, but if Congress should inhibit the running of interstate freight trains through a State on Sunday it would be in the interest of the public morals of the State. rather than in the interest of commerce.

Mr. WORKS. Certainly, that would undoubtedly be true; but it must connect itself in some way with the power of the Government to deal with matters which affect more than one State.

Mr. BORAH. I do not contend otherwise.

Mr. WORKS. I did not catch the name of the author from whom the quotation was taken.

Mr. BORAH. The particular quotation with reference to freight trains was from the Senator from Idaho.

Mr. WORKS. Very well. Then, I was questioning the correctness of the statement of the case by the Senator from Idaho.

Mr. BORAH. There are plenty of authorities to the effect that Congress may do that thing.

Mr. WORKS. I have no doubt of their power to do that as connected with interstate commerce. I think the Senator is right about that unquestionably.

Mr. BORAH. I have not contended for a moment that Congress could pass an act providing that an intrastate road should not run its freight trains on Sunday.

Mr. WORKS. I asked that question in view of the suggestion made by the Senator from Georgia [Mr. SMITH] a moment ago, whether it was not necessary to connect the exercise of such authority in some way with the power to deal with interstate commerce.

Mr. BORAH. In the case of Bank *v.* Haskell (219 U. S., 111) the court says:

> It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare.

Again, the Supreme Court says in the case of Mutual Loan Co. against Martel, in Two hundred and twenty-second United States, page 232:

> The police power is not confined to the suppression of what is offensive, disorderly, or insanitary, but extends to so dealing with the conditions which exist in the State as to bring out of them the greatest welfare of its people.
>
> In a sense the police power is but another name for the power of government and a contention that a particular exercise of it offends the due-process clause of the Constitution is apt to be very intangible to a precise consideration and answer.

Mr. President, I want to examine some of the authorities, and the first one that I shall ask the Senate to consider with me is what is known as the Lottery case. There was a time when the Lottery case was looked upon as being questionable law in the Supreme Court of the United States, the opinion having been rendered by a bare majority of the court, as I remember—at least there were strong dissenting opinions—but in view of the subsequent decisions of the Supreme Court of the United States I think that there can be no doubt any longer that the majority opinion of the court in the Lottery case has come to be the settled law of the Supreme Court of the United States. The Lottery case can not be sustained upon any other principle or theory than that of the power of Congress to protect the channels of interstate trade from use by people for immoral purposes or for purposes which are deemed to be detrimental to the public interests. No one can contend successfully, for instance, that the mere transportation of a lottery ticket through the channels of interstate trade, considering the ticket itself and its inability of itself to work any detriment to the community in its course of transportation and the manner of its carrying, would be a subject matter which the Congress would take consideration of if it were not permitted to consider also the other proposition of the effect upon the morals of the community in the use of the lottery ticket. The statute, as Senators will remember, was a criminal statute, and I want to read it. It says:

> That any person who shall cause to be brought within the United States from abroad for the purpose of disposing of the same, or deposited in, or carried by the mails of the United States, or carried from one State to another in the United States, any paper, certificate, or instrument purporting to be or represent a ticket, chance, share, or interest in or depending upon the event of a lottery, so-called gift, concert, or similar enterprise, offering prizes dependent upon the law of chance, or shall cause any advertisement of such lottery so-called gift concert or similar enterprises, offering prizes dependent upon lot or chance, to be brought into the United States, or deposited in or carried by the mails of the United States, or transferred from one State to another in the same, shall be punishable in the first offense by imprisonment for not more than two years or by a fine of not more than $1,000, or both, and in the second and after offenses by such imprisonment only.

Almost every question which has been raised with reference to the child-labor bill was raised by the distinguished lawyers who argued the lottery case. It was believed to be the entering of the National Government into intrastate concerns for the enforcement of the criminal laws of the State. It was contended that it was not enacted in the interest of commerce, that it was simply to enforce certain laws which had to do with the moral conduct of the individuals in the particular States where they were located. It was urged that it was a subterfuge, while professing to regulate commerce, was in fact intended alone to punish individual conduct.

Justice Harlan, who wrote the opinion of the court, said:

> If a State, when considering legislation for the suppression of lotteries within its own limits, may properly take into view the evils that inhere in the raising of money in that mode, why may not Congress invest it with power to regulate commerce among the several States, providing that such commerce shall not be polluted by the carrying of lottery tickets from one State to another? In this connection it must not be forgotten that the power of Congress to regulate commerce among the States is plenary, is complete in itself, is subject to no limitations except such as may be found in the Constitution. What provision in that instrument may be regarded as limiting the exercise of the power granted? What clause can be cited which in any degree countenances the suggestion that one may of right carry, or cause to be carried, from one State to another that which will harm the public morals? We can not think of any clause of that instrument that could possibly be invoked by those who assert their right to send lot-

tery tickets from State to State except the one providing that no person shall be deprived of his liberty without due process of law.

The public morals, Mr. President—not the morals of the State of Idaho, not the morals of the State of North Carolina, but the morals of this one unity, the Nation and the people who are subject to it. Can a State be more interested in the protection of the moral and physical well-being of the citizen than is the United States?

The misery, sir, which has haunted the dark lanes of London in these many years; the dismal, soulless beings who for generations have crowded Trafalgar Square, came near being England's undoing in her hour of greatest need. The Boer war admonished her that some sinister influence was at work with the finer virtues of her manly people—that something of the moral fiber, the physical prowess, and even love of country, had been forfeited in the fearful grind for wealth. And when the present crisis came on, the warning which she had received a few years ago came to be a troubled realization. If the time ever comes when we are called upon, as some nations are now being called upon, to test the endurance and capacity of our people even unto the utmost, to search the hearts and souls of our people for those qualities of citizenship which in the last analysis are the real reserves of the country, we may be called upon to reflect upon our past conduct relative to our effort to maintain and preserve the citizenship, the stature, the physical and moral well-being of our entire people. For upon their shoulders alone rests the Republic in the hour of peril.

Now, in this larger and broader and more tremendous question of the upbuilding and preservation of our citizenship the keeping it up to the highest standard of moral and physical efficiency may we not so regulate and control the instrumentalities of government as to discourage and punish those who are engaged in practices wholly inimical to the building up and preservation of our citizens? If we find those in our community employing the young of our country under such conditions as ultimately to affect the whole country, to lower the standard physically and morally of our people, may we not in the exercise of the power granted to Congress to regulate commerce so regulate it as to withdraw from them the means of interstate commerce while they are so engaged in such practices? In other words, may we not in regulating commerce so regulate it as to serve this great cause of upbuilding and preserving the moral and physical well-being of our entire citizenship? Are those who are engaged in the practices which are condemned by the common judgment of men to be contrary to the best interests of the people as a whole entitled to use the facilities of interstate commerce in carrying on their business? If we must say that notwithstanding the immoral methods of production, your products are nevertheless entitled to enjoy the same privileges as products produced in accord with the best interests of the country, if in other words, the inanimate object of commerce itself being clean and in no sense dangerous it must go through the channels of trade notwithstanding it was produced in ways wholly at war with the best interests of society and of the Government, then of course the supporters of this bill are wrong in their contention. But if, on the other hand, we may take into consideration in the regulation of commerce the interests of communities as a whole, the welfare of the people as an entirety, the general interests of the Nation, and so regulate it as to conserve and encourage and augment those interests, then the supporters of this bill are upon safe ground.

The public morals, the public interest, and citizenship, as indicated by Justice Harlan in this opinion, are within the purview of the National Government quite as fully and completely as within the purview of the State government. And when these matters are reasonably related to interstate commerce, when they may be conserved by the regulation of interstate commerce, Congress may act.

If the carrying of lottery tickets from one State to another be interstate commerce, and if Congress is of opinion that an effective regulation for the suppression of lotteries, carried on through such commerce, is to make it a criminal offense to cause lottery tickets to be carried from one State to another, we know of no authority in the courts to hold that the means thus devised are not appropriate and necessary to protect the country at large against a species of interstate commerce which, although in general use and somewhat favored in both National and State legislation in the early history of the country, has grown into disrepute and has become offensive to the entire people of the Nation.

The Senator from Connecticut [Mr. BRANDEGEE] awhile ago put a question as to the extent to which we could finally go in this matter. The same question was presented by the Senator from North Carolina [Mr. OVERMAN]. As Justice Harlan says, lotteries have come at last, in the judgment of the people of the United States, to be inimical to the public interest; and we having arrived at that conclusion, the mere fact that we did not entertain such an opinion 50 years ago is no reason why we should not exercise the powers of Congress in accordance with the public opinion which we entertain at this time.

Now, Mr. President, let us look for a moment at the white-slave decision.

Mr. WORKS. Mr. President, before the Senator leaves that subject, I have no doubt myself of the correctness of the decision in the lottery-ticket cases. I have just as little doubt of the proposition advanced by the Senator from Idaho that the Government of the United States has the right to protect the morals and the health of the country as a country, or as a whole; but that, it seems to me, does not quite meet the situation.

It is not claimed that the thing to be carried in this case is detrimental to health or morals at all. The bill goes back into the State, and prohibits the carrying of these goods because they are manufactured in a particular way within the State. It seems to me to present an entirely different proposition. That is the phase of the case that I should be glad to have the Senator from Idaho cover in what he is going to say—and I have no doubt he will—because that is the troublesome feature of it to me.

Mr. BRANDEGEE. Mr. President, if I may be permitted to make a suggestion, inasmuch as the Senator has alluded to the question I asked him, the same thought occurred to me that has occurred to the Senator from California. In fact, it was discussed at length before the committee in the hearings. It seemed to me that the distinction between the lottery case and the principle which is the basis of this bill was that the lottery decision prohibited the transportation of an integral part of the lottery system itself. This bill seeks to prohibit nothing of that kind. It does not prohibit the transportation of child labor or of children, but of an innocent product of child labor.

Mr. BORAH. But the question is, Why did the National Government prohibit the transportation of that particular ticket? Was it because of any defect in the ticket itself, because it in itself was dangerous to commerce, or because during its transportation it might in any way diminish or disorganize or demoralize commerce? It was because of the intent with which it was sent through the channels of interstate trade, and it was prohibited for the reason, and no other reason, than because Congress said that the channels of interstate trade shall not be used for a purpose—whatever that purpose or however used—which may be considered detrimental to the public welfare. Now, if you may not use the channels of trade to carry articles which end in immorality and evil, can you use the channels of trade to carry articles produced by immoral and wrongful methods?

Mr. WORKS. But it was intended to prevent the carrying of an unlawful or immoral influence into another State.

Mr. BORAH. If you can prevent the carrying of an article into a State because it may have an immoral influence when it gets there, may you not exercise the same power to prevent a man from carrying an article out of a State when he has produced it in a way which is deemed to be immoral where it is being produced?

Mr. WORKS. That is, to my mind, the crux of the whole question.

Mr. BORAH. Yes. I can not see how it can be very well said that Congress was given a power which it may exercise for the benefit of those at one end of the channel, and which it may not exercise for the benefit of those who are at the other end of the channel. The Congress closes its channels to an article because it may effectuate wrong; may it not deny its channels to trade which, because it can be shipped, helps to make wrongdoing profitable?

Mr. HARDWICK. Mr. President, will the Senator yield to me?

The VICE PRESIDENT. Does the Senator from Idaho yield to the Senator from Georgia?

Mr. BORAH. Yes, sir.

Mr. HARDWICK. If the Senator will pardon me, it is on this theory: That so far as the consumption end of it is concerned, the several States of the Union can have no protection unless Congress gives it; and they, against their will, and without power to prevent it, will be put at a disadvantage and compelled to do something or to receive something that they do not want to receive. But in the case of production, going to the other end, the conditions of labor referred to on this very subject can only be such as the State permits, and they do not affect anybody except the people in that State.

Mr. BORAH. Let us examine this other case that we have before us and see if it throws any light upon the subject. That in the case of Hoke *v.* The United States (227 U. S., 308),

known as the white-slave case. The Supreme Court says in this case, in the syllabi:

While women are not articles of merchandise, the power of Congress to regulate their transportation in interstate commerce is the same, and it may prohibit such transportation if for immoral purposes.

The right to be transported in interstate commerce is not a right to employ interstate transportation as a facility to do wrong, and Congress may prohibit such transportation to the extent of the white-slave traffic act of 1910.

If you can not use the channels of interstate trade for the purpose of effectuating a wrong, can you use the channels of interstate trade to carry a product which has been produced or effectuated by a wrong?

Mr. WORKS. Mr. President, it seems to me that the distinction lies in the fact that in the white-slave cases they were trying to prohibit the carrying of an immoral influence into another State.

Mr. BORAH. Not necessarily, Mr. President. If A should have invited a woman from Louisiana or New Orleans to go to Beaumont, Tex., although the woman may have known nothing of the purpose, and although she might have been as pure as the driven snow when she arrived there, if he afterwards induced her to enter into a state of concubinage he had violated the law.

A transaction had occurred which was wholly within a State, wholly within the control of the State government, wholly within the criminal law; but the man had used the channels of interstate trade in carrying a perfectly innocent person and a perfectly moral person to that place for the purpose of accomplishing his purpose.

Mr. WORKS. Yes; but I will suggest to the Senator that he must take into account the man as well as the woman. The woman may have been perfectly innocent in the case suggested by the Senator. It is the man that is inducing the transportation of the woman from one State into another.

Mr. BORAH. Exactly; but the man had not been in the channels of interstate trade. He had not been in the course of transportation at all. He had not passed over the road. The only one who had been in the channels of trade and had passed over the channels of trade in the train or was in commerce was the perfectly innocent party.

Mr. CLAPP. Even if the man went along, his going was not commerce.

Mr. THOMAS. Mr. President, suppose there should be offspring as the result of these immoralities; would Congress have power, in the exercise of its power to regulate commerce among the States, to prohibit their transportation from one State to another?

I ask the question in all seriousness, Mr. President, because I think it is a distinction which might be applied here; and if the Senator's argument, to which I am listening with profound interest, is correct, then it would seem to me that Congress could so legislate.

Mr. BORAH. Yes; I think so. I do not think that would be sufficiently incidental to the interstate-commerce act, or transportation, perhaps, to come within the control of Congress.

Again, the Supreme Court in the syllabi says:

Congress may adopt not only the necessary but the convenient means necessary to exercise its power over a subject completely within its power, and such means may have the quality of police regulations.

Well, when it has the quality of police regulations it is police regulation. It is no different than if the court, instead of saying "have the quality of police regulations," had said, "has the power of police regulation."

Then the only question is, Mr. President, To what extent may Congress exercise that police power? I concede that it must be the exercise of such police power as is incidental in a reasonable way to commerce, or to interstate commerce. If it is wholly disconnected from interstate commerce, and can not be said to be reasonably allied with it or in any way connected with it, certainly the mere fact that Congress possesses the police power would not enable it to deal with it.

Mr. BRANDEGEE. Mr. President, will the Senator permit me to ask him there to explain how the regulation of the hours of labor in a mill in a State is related to interstate commerce?

Mr. BORAH. In just a few minutes, when I get through with this decision, I will do that, or try to do it, at least.

The court says:

What the act condemns is transportation obtained or aided or transportation induced in interstate commerce for the immoral purposes mentioned. * * * It urges a right exercised in morality to sustain a right to be exercised in immorality. It is the same right which attacked the law of Congress which prohibits the carrying of obscene literature and articles designed for indecent and immoral use from one State to another. * * * It is the same right which was excluded as an element as affecting the constitutionality of the act for the suppression of lottery traffic through national and interstate commerce. * * * It is the right given for beneficial exercise which is attempted to be perverted to and justify baneful exercise, as in the instances stated and which finds further illustration in Reid v. Colorado (187 U. S., 137). This constitutes the supreme fallacy of plaintiffs' error. It pervades and vitiates their contentions.

Plaintiffs in error admit that the States may control the immoralities of its citizens. Indeed, this is their chief insistence, and they especially condemn the act under review as a subterfuge and an attempt to interfere with the police power of the States to regulate the morals of their citizens, and assert that it is in consequence an invasion of the reserved powers of the States. There is unquestionably a control in the States over the morals of their citizens, and, it may be admitted, it extends to making prostitution a crime. It is a control, however, which can be exercised only within the jurisdiction of the States, but there is a domain which the States can not reach and over which Congress alone has power. * * *

Our dual form of government has its perplexities, State and Nation having different spheres of jurisdiction, as we have said, but it must be kept in mind that we are one people; and the powers reserved to the States and those conferred on the Nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral. This is the effect of the decisions, and surely if the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to and the enslavement in prostitution and debauchery of women and, more insistently, of girls.

This is the aim of the law expressed in broad generalization; and motives are made of determining consequence. Motives executed by actions may make it the concern of Government to exert its powers. Right purpose and fair trading need no restrictive regulation, but let them be transgressed and penalties and prohibitions must be applied.

* * * * * * *

The principle established by the cases is the simple one, when rid of confusing and distracting considerations, that Congress has power over transportation "among the several States"; that the power is complete in itself, and that Congress, as an incident to it, may adopt not only means necessary but convenient to its exercise, and the means may have the quality of police regulations.

Mr. WORKS. Mr. President, suppose we separate these two things—the production and the transportation. I presume that the Senator would not claim that the National Government had any right to interpose in the mere matter of production within a State, independently of the question of transportation?

Mr. BORAH. No; certainly it would not. The Congress has nothing to do with production per se, but in the regulation of commerce it may affect production.

Mr. WORKS. Going a step further, the act of transportation is of a product that is perfectly innocent in itself; and how you can connect the two things together, and make the transportation illegal or against good morals or good health, is the question in my mind.

Mr. BORAH. Exactly. Well, I think the Senator will concede this much—that so long as the channels of interstate trade may be used by those who are employing child labor it augments and encourages child labor. Interstate commerce is a part of the successful carrying out of their scheme to use beneficially their child labor.

Mr. WORKS. Yes; but the child-labor question is one that is confined wholly to the State.

Mr. BORAH. Exactly; but what I want the Senator to admit is this—that so long as the Government lends its instrumentalities of government to the use of those who employ child labor, it is augmenting and encouraging the doing of that which is deemed to be immoral or contrary to the public interest. Now, may not the Government withdraw its instrumentalities of government and say that they are not subject to the use of those who are employing child labor, because of the fact that by doing so we are aiding, augmenting, encouraging, and sustaining the employment of child labor? The employing of child labor, the carrying the goods in interstate commerce, are parts of a plan as a whole.

Mr. WORKS. The trouble about it is, I think, that the Senator is attempting to combine two things—one illegal or objectionable on moral grounds, and the other perfectly and wholly innocent; and with the one that is not innocent the State has the full and exclusive right to deal, and the Government has none. Now, the mere act of transporting these goods after they are manufactured in a way that we think is objectionable is in no sense a violation of the rights of the Government. It does not in any way affect the public morals or the public health, it seems to me. I am glad to admit anything that will solve this question in a legitimate way.

Mr. BORAH. Let me ask the Senator this question: Does he contend that the Congress of the United States must stand idly by and not exert its power over the interstate channels of trade when those channels are being used by people who, by reason of the use, are encouraged in the doing of things which the Senator believes to be wrong?

Mr. WORKS. That, in my judgment, is not the question. It is not a question whether the Government should stand by or not; but the thing that is being done with which the Government has a right to interfere is not in any sense illegal, and I think it can not be made illegal by a mere dictum of the Congress of the United States, because it is innocent in itself.

Mr. WORKS. That, in my judgment, is not the question. It is not a question of whether the thing being done with which the Government has a right to interfere or not is in any sense illegal, but I think it can not be made illegal by the mere dictum of the Congress of the United States if innocent in itself.

Mr. KENYON. Mr. President, does not the Senator concede too much if he meant to concede that the child-labor evil is solely a State evil, or an evil within a State? The lottery can be carried on within a State, and Congress can not affect that. Now, you come to carry out the purposes of the lottery by transporting the tickets in interstate commerce. In the case of the child-labor proposition, if you stop within the State that is the end of it, but you have to carry it out by carrying the products of child labor in interstate commerce just as you carried the tickets of the lottery.

As to the lottery-ticket situation, I do not think Congress prohibited that because of the effect it might have upon two or three people, or even a thousand people, who might engage in the lottery business, or in the white-slave matter because of the immorality that might be committed in some cases at the end of the line, but it was because of the general scheme and system of immorality which was involved in that act within the State and the transportation and the act at the end of the line. In the lottery it was the general scheme and plan that was offensive to our high standard of morality and our high standard of the public welfare. That is exactly true with child labor. It is the general scheme of making articles by child labor and selling those articles in other States; it is a general plan and a general method of production that is offensive to the public welfare and public morals of our citizenship.

Mr. WORKS. It may be that the Senator from Idaho conceded too much, as is suggested by the Senator from Iowa. I think myself he has conceded away his whole case.

Mr. BORAH. I will ask the Senator what I have conceded. I have no concession such as the Senator from Iowa suggested.

Mr. WORKS. The Senator conceded, as I understood him, that the Government has no right to interfere with the production by child labor.

Mr. BORAH. No; the Senator did not put that question. The Senator put the single question whether or not we could interfere with the simple fact of production. Of course if it is exclusively intrastate, and the production is separated from the fact that the article is to be shipped into interstate trade, that is one question; but I am not conceding for a moment that the Government is not interested in that production when the production goes on through the efforts of child labor, and is all a part of an entire plan involving the use of the channels of interstate trade.

Mr. WORKS. It seems to me that the whole ground upon which this sort of legislation may be maintained is the very one suggested by the Senator from Iowa, that because it affects the morals of the people of the State it affects the whole mass of the people of this country; upon that ground the Government may interfere. I think that is the only ground, I will say to the Senator from Idaho, or the only thing that has been suggested to my mind that would uphold this kind of legislation. I do not think it is possible to connect it with transportation and sustain it in that way.

Mr. BORAH. I do not know that the Senator has been here all the time. I referred to the fact that the National Government was just as much interested in the morals of its people and its citizenship as the State was, and that it was for the reason that the National Government has a duty to perform toward its citizenship as a whole in protecting the moral and physical well-being of the citizenship as a whole that it could take hold of this subject. I have not made any concession to the contrary to that, because it is the basis of my contention here. What I did say, of course, was that the production of this and the act of manufacturing wholly within the State is a matter for the State, but I have made no further concession.

Mr. WORKS. That is a very plausible way of presenting the question and it has its force, but that position would certainly give the right to the National Government to interfere and legislate with respect to anything immoral within a State if you separate it from the question of transportation. You have to connect the two together in order to give Congress jurisdiction to deal with it at all. That takes me back again to the matter I suggested awhile ago, whether you can connect the innocent act with the act on which the Government is attempting to legislate and in that way attach jurisdiction.

Mr. BORAH. Let me say, if the manufacturers of this country from one end to the other are manufacturing goods in such a way as to be detrimental to the welfare of the citizens, as to be undermining the moral and physical condition of the citizenship, may not the Congress of the United States withdraw the instrumentalities of Congress from the use of those who undertake to use it for the purpose of shipping those goods which have been thus manufactured in this way? If they keep the goods wholly within the State the Senator is correct, but when they undertake to use the channels of interstate trade to augment and build up and sustain and keep alive their business, then may not the Government withdraw the use of those channels and those who thus employ labor?

Mr. WORKS. I think if there was a combination in different States for that purpose, transportation facilities being used to carry out that purpose existing in different States, undoubtedly that might be so. I want the Senator from Idaho to understand that I am trying to get information on this subject. I have not thoroughly made up my mind as to what course I shall pursue when it comes to the question of voting on this bill, but there is a difficulty in the way of it, and I know the Senator from Idaho is as competent to deal with those questions as any man I know of, and I am asking questions and calling his attention to the difficulties that present themselves to my mind.

Mr. BORAH. Now, let me put this question to the Senator. I am very glad to have this discussion with the Senator because I realize his ability and integrity of purpose. Suppose there is a manufacturing establishment in California that is sustaining itself and living by reason of the fact, first, that it employs children of a very tender age and at very low prices; second, that it must have a market in New York City.

Mr. WORKS. Will the Senator be kind enough to take some other State for illustration, because that could not be done in California. We have a very strict child-labor law in California, I am glad to say.

Mr. BORAH. Let us assume before that law was enacted, just for the purpose of illustration, the manufacturing establishments there which by reason of competing conditions employed children of tender years, and very long hours, but suppose its only market for goods was in New York City, would the Senator believe that Congress was inhibited from denying the use of the channels of interstate trade to those goods which were thus created by it and upon which it was dependent entirely for its maintenance?

Mr. WORKS. If I were able to answer that I would be perfectly prepared to vote on this bill. Those are things I want to know.

Mr. OVERMAN. May I ask the Senator from Idaho a question? I want to understand his position. Did I understand the Senator to say that Congress has the right to withdraw from a State the right to ship goods in interstate commerce?

Mr. BORAH. No; what I said was this: Suppose there is a manufacturing establishment in North Carolina employing child labor at a very low figure and very tender years, and it was dependent for its existence upon two or three facts; first, the employment of child labor; second, the ability to use the channels of intertsate trade to carry its goods to its only market in New York City, could Congress in order to prevent the employment of child labor for the protection of its citizens in which the Government is just as much interested as South Carolina or North Carolina say that the instrumentalities of the Government shall not be used to carry the goods thus manufactured in contravention to the good morals and the welfare of the people of the country?

Mr OVERMAN. I know the Senator's position, but I thought he did say that Congress would have a right to withdraw from a State the right to ship in interstate commerce. There is no such power as that granted in the Constitution. The only power granted is the power to regulate.

Mr. BORAH. Of course, I know the word "regulate" was used by the Constitution makers for the purpose of giving over to the National Government the entire control of interstate commerce. There are some things which you can deny the State the right to ship into other States.

Mr. OVERMAN. You can make a regulation of interstate commerce, but you can not deny the right of a State to ship.

Mr. BORAH. It may take the form of prohibition. Congress can prohibit you from shipping certain things from North Carolina to South Carolina.

Mr. BRANDEGEE. Mr. President, I agree with the Senator, of course everybody does, that the entire Nation is just as much interested in the morals and the health of the citizens of every State as the States are themselves, but the question in my mind is in what channels the National Government has authority to exercise power. It seems to me that there must be some things that pertain to the health and the morals of the people of the State that are exempt from the action of Congress. The Senator says that we may withdraw, by way of the regulation of commerce among the States, the instru-

mentalities of commerce from the use of those who do not conform to our standard involving health and morals, and so forth. The Senator would not claim that Congress could pass an act prohibiting interstate transportation of the goods of a factory in New York that was not properly equipped with fire escapes and fire apparatus and sanitary appliances for the convenience and health of its operators.

Mr. BORAH. There are conditions in which, I believe, Congress could do that. If the relationship to commerce was sufficiently connected.

Mr. WORKS. Mr. President, in connection with the question the Senator from Idaho put to me awhile ago may I make a further suggestion?

Mr. BORAH. Yes, sir.

Mr. WORKS. When it comes back to what I suggested before, taking the case that the Senator submits, where, in California, the goods are manufactured in a way that may be regarded as detrimental to morals or health, and the shipping of those goods to New York, the transportation is not detrimental to anybody. Assuming that the goods are themselves of an interstate character, the act of transportation does not affect anybody.

Mr. BORAH. Yes it does.

Mr. WORKS. Just wait a moment. The selling of the goods does not affect anybody in New York, but we have got to connect that up with the production within the State. The whole difficulty, in my mind, is as to whether you can connect those two things. The Senator, of course, insists that by allowing transportation you are aiding in the production of goods in an improper way. The question in my mind is whether that would give Congress the power to deal with the question as an interstate matter. To me it is a very serious question.

Mr. BORAH. I can imagine that it is, and it is a serious question to everyone, because I think we are on the border line of the power of Congress with reference to these matters.

But first I will answer the question of the Senator from Connecticut whether or not we could now deny a manufacturing establishment the right to ship goods because it did not have a proper fire escape. I would not undertake to say offhand that that is such a matter as would be considered to affect the general interests or the general welfare or the public concern of the people as a whole throughout the United States. But I can imagine a relationship of these things to commerce which would justify the interference of Congress.

Mr. BRANDEGEE. I will not interrupt the Senator again, but I will take this opportunity to say, if the Senator will allow me, modern interstate commerce is so intricate and the production of the States and the consumption of the States, the trading of all the States is so inextricably involved in interstate commerce that if Congress has the power over interstate commerce to prohibit and put an embargo on the States from importing and exporting with each other until they shall comply, in the interest of public morals and health, with such standards as Congress may set up, it is good-by to any government in this country except that of an "imperium" located here in Washington, and Congress will henceforth have the powers of the British Parliament.

Mr. BORAH. The Senator has stated a fact which is necessary for this legislation. As time has gone on, those things being interlaced and intermingled, necessarily the National Government has had to take over and assume control in such a way that it never deemed necessary before. But will the Senator contend, for instance, that the State government can exercise police regulations over interstate commerce?

Mr. BRANDEGEE. No.

Mr. BORAH. Not at all. Yet the Senator says that commerce has become so intermingled and so interlaced and is so subject to national control that it can deal with no part of it practically without dealing with it all.

Mr. BRANDEGEE. No; I say commerce is so inextricably intermingled between the States that if Congress can prohibit the instrumentalities of railroad transportation to the products of a State unless they conform in all respects in their production to any standard that Congress may set up for it, then it has abolished the necessity for any State government at all.

Mr. BORAH. The Senator from Idaho has not contended for any particular standard. I have said repeatedly that there is a limit to the exercise of the police power both in the State and the National Government. Of course Congress in the exercise of police power over the channels of interstate trade must be within those limits which may be defined from time to time to be within the limits of the police power, just the same as the State must be within its limits. The Senator from Connecticut makes the same argument which has been made against the exercise of the police power in a thousand instances over matters purely intrastate.

But the Senator from Connecticut is making the same argument which has been made against the exercise of the police power in many instances over matters purely intrastate, time and again on the street corners. It has been argued that with reference to intrastate powers, the exercise of the police power under the circumstances was to rob the citizen of individuality, of initiative, and to place him completely under the socialism of the State. The Supreme Court has answered by saying, as it said in the bank case from Oklahoma, that whatever the common and public opinion comes to regard as the public welfare, shall be regarded by this court as the police power.

Mr. BRANDEGEE. Mr. President, I have not made any such argument against the constitutionality of the legislation in the cases which the court has sustained. I am simply saying now that, in my opinion, we are at the parting of the ways; and I say that in the cases where the court has sustained the constitutionality of the previous acts to which the Senator has referred, they were cases where the commodity itself prohibited from interstate transportation was noxious or deleterious; and that this case does not purport to prohibit the commodity because it is deleterious, but because it was manufactured under conditions which do not suit the temporary view of this Congress.

Mr. BORAH. The Senator from Connecticut is mistaken about that. The courts have not always confined it to instances where the article in transportation was deleterious or injurious to interstate commerce.

Mr. BRANDEGEE. Or for an immoral purpose, of course.

Mr. BORAH. Then, when you say for an immoral purpose you must leave it to the discretion of Congress as to what is an immoral purpose.

Mr. BRANDEGEE. But I say——

Mr. BORAH. Just a moment.

Mr. BRANDEGEE. That is not the point. The article itself was prohibited from transportation because it was to be used for an immoral purpose.

Mr. BORAH. Yes; because it was conducive to an immoral purpose, and when you prohibit the shipment through interstate commerce of goods which have been created through immoral agencies you are acting precisely upon the same principle as when you prohibit the shipment of goods which are to be used for immoral purposes.

Mr. BRANDEGEE. To my mind, that carries it a step further than the courts have ever gone. The Senator says that the only way to prevent a perpetuation of this abuse and of what is considered to be a wrong is to prohibit the man back in the State from employing child labor, but the transportation of the article produced by child labor into the other States does not at all contribute to any immoral purpose. This measure is simply designed to prohibit the employment of children back home in the several States; and the Senator says that the transportation of the article may contribute to that end. That, I think, is going further than the courts have ever gone in this class of cases.

Mr. BORAH. It may be, applying the principle on a different state of facts from what the courts have ever applied it; but there can not be any other interpretation of the white-slave act than, as the Supreme Court held, that the channels of interstate trade should not be used in any way at all which would finally result in that which was detrimental to the morals of the people of the United States.

Mr. BRANDEGEE. Mr. President——

Mr. BORAH. Wait just a moment.

Mr. BRANDEGEE. I have not that act before me, but let me call the Senator's attention right here to the fact that in the white-slave act transportation must have been done with the purpose of committing immorality.

Mr. BORAH. Exactly. The purpose, the intent, goes back equally to the criminality in view of the statute or whether it was criminal and the criminal intent. As I said a moment ago, the person transportated in interstate commerce might have been wholly innocent of any improper intent whatever; the person transported might have been wholly innocent of any improper thought or purpose, but the party who had the criminal intent was always solely and completely within the control of the State government; the party who invited the other individual into the State was always completely within the police power of the State government, was solely subject to its jurisdiction, while the party who traveled in interstate commerce may have been perfectly innocent of any improper intent or purpose, yet the Supreme Court said that these channels of trade are closed even to perfectly innocent people

in purpose and thought. Why? To promote the morals of the community, and for nothing else in the world.

Mr. BRANDEGEE. As I understood it, the channels of interstate commerce were not closed to the innocent party, but they were penalized after they arrived.

Mr. SMITH of Georgia. The guilty party was penalized—the man who meant the evil.

Mr. BRANDEGEE. Yes; the guilty party.

Mr. BORAH. Of course, the purpose of which was to close the channel of interstate commerce. It made it immoral to use it. That is the distinction; that is the difference.

Mr. BRANDEGEE. It is the same in this bill.

Mr. BORAH. Let me see whether it is or not.

Mr. WORKS rose.

Mr. BORAH. Just a moment. I should like to get through with one at a time. Let me see whether it is or not. Here is John Jones, in the State of South Carolina, or, I will say, in the State of Idaho, in order that I may offend no one. He is manufacturing goods. So far as his purpose is concerned, he has no intention except to get his goods into interstate commerce, but he is employing child labor. He must use the channels of interstate trade. The goods which he ships in interstate trade are not deleterious; they are not bad; they are in no way an injury to commerce, any more than the particular individual who is invited to go into another State was deleterious to interstate commerce or in any way bad; but the court says that this channel shall be closed to you—

> You are prohibited from using it, for the reason that we conceive it to be to the injury of the people of the United States, of the entire community, to have the kind of business going on in which you are engaged; as you are engaged in a business which is immoral, which is undermining the public welfare, which is contrary to the health and to the interests of its citizens, we will withdraw the instrumentalities of interstate commerce from your use.

What is the difference between that proposition and withdrawing those channels from the use of a man who was inviting a perfectly innocent person into another State? In both instances the commodity of itself is not injurious to commerce; in both instances they are innocent; in both instances they are commerce; and in both instances the parties who are finally punished are completely within the control of the State and completely within the police power of the State. Now, what is the difference between the two propositions?

Mr. BRANDEGEE. I think the Senator from Georgia [Mr. HARDWICK] showed the difference.

Mr. BORAH. I did not hear what the Senator from Georgia said.

Mr. BRANDEGEE. He said that the State of origin could prevent the article going out to protect itself, if it wanted to do so. There was no harm done at the other end of the innocent article going——

Mr. BORAH. That is where we differ. This power of Congress does not depend on the power of the State to protect itself; it depends upon the terms of the grant.

Mr. BRANDEGEE. Not from the article.

Mr. BORAH. No; not from the article. Neither was there any harm from the persons referred to going into the other State. The harm arose after they had gone into the other State and became completely subject to the police power of that State.

Mr. BRANDEGEE. Exactly; but no harm whatever happens in the State to which the goods are shipped under this child-labor bill. The product which arrives in the other State is perfectly innocent, indeed a necessary and legal article of commerce, and the people at home, in the State of origin, are manufacturing the product in accordance with their own laws and to their own satisfaction. Then, because somebody else in another State is not satisfied with the domestic laws and the exercise of the police powers of the State of origin, they propose to put an embargo on that State and prevent any of its products going out unless they are manufactured in accordance with our standards. Of course, no man is wise enough to say whether or not the Supreme Court will sustain this act. If they do sustain it they will absolutely change our form of government.

Mr. BORAH. They will not have changed it any more than they have in the white-slave case.

Mr. BRANDEGEE. Yes; a great deal more, I think.

Mr. BORAH. In what respect will they change it? We are dealing with the morals in both cases.

Mr. BRANDEGEE. We are not dealing with the question of morals in this instance; we are dealing with the general welfare of children; and I am as much in favor of their welfare as anybody can be, but——

Mr. BORAH. I consider that a moral question.

Mr. BRANDEGEE. But I am also in favor, if I may be permitted to say so, of preserving our form of government and our Constitution; and if this legislation can be sustained I can not see any further use for the existence of the several States in this country.

Mr. BORAH. That is what was said when the case of Cohen against Virginia was decided.

Mr. BRANDEGEE. There have been a good many things said before I arrived here; I will admit that.

Mr. BORAH. The argument was that if the State's judgment could come under the review of the Supreme Court the State governments were wiped out; that we had become one government; and there was nothing for the States to do. I think that the Senator will still have left for the States to deal with all those transactions which are not related to interstate commerce, which is a very large field of activity and a very large field of industry.

Mr. WORKS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from California?

Mr. BORAH. I yield to the Senator.

Mr. WORKS. The Senator from Idaho never fails to make his own position clear; but I want to see if I understand just what that position is and what is likely to be the effect of it.

Mr. BORAH. I will not answer for the effect of it.

Mr. WORKS. As I understand, it amounts to this: That because the citizens of a State are manufacturing goods in a way or by a means that the Government thinks detrimental, it is claimed by the Senator that for that reason the Government has a right to close the market for those goods in any other State and refuse the right of transportation to the citizens of the State. That is his position, is it not?

Mr. BORAH. In a measure; but the Senator has not stated it all.

Mr. WORKS. What have I failed to state?

Mr. BORAH. Well, go ahead with your statement.

Mr. WORKS. I have made my statement, and I ask the Senator if that is not his position?

Mr. BORAH. Not exactly; no.

Mr. WORKS. Would the Senator mind saying in what respect his position differs from the suggestion I have made. I am dealing perfectly frankly with this matter, I will say to the Senator from Idaho, and I think he is trying to do the same thing.

Mr. BORAH. I am not complaining of the Senator trying to catch the Senator from Idaho at all.

Mr. WORKS. I have no such intention.

Mr. BORAH. What I contend, to state it over again, is that one engaged in interstate commerce—shipping goods in interstate commerce—must, in order to enjoy that privilege, conform to the regulations of Congress, and that those regulations may take on the quality of police regulations as to all matters fairly connected with interstate commerce. We claim that Congress may in its police power, a part of the implied power under the commerce clause, deny the party the right to ship goods which have been manufactured for interstate commerce by child labor, because child labor is at war with the whole structure of civilized society and destructive of American citizenship

The Congress of the United States has complete and plenary power over the channels of interstate trade. The only thing which would inhibit them from exercising their judgment relative to what was for the best interests of the people in connection with interstate commerce, would be the fifth amendment, the due-process clause of the Constitution. Is not that correct?

Mr. WORKS. Yes; Congress has power, but——

Mr. BORAH. Well, now——

Mr. WORKS. Wait just a moment. It is not an arbitrary power. If Congress should attempt to prevent the transportation of a perfectly innocent article where there was no offense committed at all respecting it, would the Senator maintain that that could be done?

Mr. BORAH. No. As I have said, there are other provisions of the Constitution, such as the fifth amendment, establishing the due-process principle, which we must have regard to, but, as Justice Harlan asked with reference to lottery tickets, does the fifth amendment protect a man in sending a lottery ticket? Does the fifth amendment protect a man in sending goods which have been manufactured in a way which Congress, as representing public opinion, has come to deem to be contrary to the public interest?

Mr. WORKS. I have said that I have no doubt at all about the correctness of the decision in the lottery case; but my doubt is as to whether that principle can be extended to what we are attempting to do now.

Mr. BORAH. Well, if we can not exercise this power, it is because it is a purely arbitrary power.

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Iowa?

Mr. BORAH. I do.

Mr. CUMMINS. I hesitate very much to interrupt the Senator from Idaho, but it has occurred to me that some of the illustrations which have been suggested are exceedingly unfair, and I desire to suggest a different illustration. We have a Federal law against what is known as peonage. Suppose we would add to that law a prohibition against the interstate transportation of products of the peon, applying to the contracor who employs the laborer. I assume that nobody would doubt that could be done, because our law is connected with the transportation of the peon from one State to another.

Mr. BORAH. Well, the Senator from California would have to deny it if he took the position that he did in regard to child labor.

Mr. CUMMINS. I think so; but it seems to me very clear that, in addition to punishing the man for establishing a system we could say "You shall not transport what the system produces into another State." But, now, suppose that in the State a system of peonage is established such as is condemned by the Federal law, but which does not require for its establishment the bringing in of laborers from another State. Can anyone doubt that we would have the right to say that the channels of interstate commerce should not be used in order to send out and sell the product of these men held in peonage?

Mr. BORAH. I do not think there could be any doubt at all about that—that you could deny the channels of interstate commerce to that use, to the shipping of those goods; and the goods themselves, of course, would be just as beneficial to those who would receive them as the goods which were manufactured by children's aid.

Mr. NELSON. Mr. President, will the Senator yield to me?

Mr. BORAH. I yield.

Mr. NELSON. I want to call the Senator's attention to the fact that the peonage laws are based upon the fact that peonage is a species of slavery, and is in violation of the thirteenth amendment of the Constitution of the United States. They rest upon that basis, and hence they have no application in this case. Peonage is held to be a species of servitude, a species of slavery, which is condemned by the Constitution except as a punishment for crime.

Mr. BORAH. Precisely. But that, in my judgment, does not militate against the argument which the Senator from Iowa has advanced, because what he said was that you might deny the shipment of goods manufactured by peonage labor through the channels of interstate trade. Now, so far as the goods are concerned, so far as their use is concerned, so far as their advantage to society is concerned, and so far as the cleanliness of the channels of interstate trade is concerned, they are just the same as if they had been manufactured by some one who was not regarded as akin to slavery; and the contention which we make is that in addition to the fact of punishing criminals, in addition to the fact of bringing them within the criminal law, Congress may withdraw the instrumentalities of government from the use of those who practice such things.

The practice of the employment of child labor is on exactly the same plane as peonage. It is accentuated by the same spirit and sustained by the same principle as the condemnation of peonage. The goods which children manufacture are just as beneficial to the man who uses them ultimately as if they had been manufactured by an adult. The State may punish the employment of child labor. The National Government may go further and say: "We will aid the States in the punishment, and withdraw the instrumentalities of commerce from your use in order to discourage, to disorganize, and to demoralize the employment of child labor."

Mr. OVERMAN. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from North Carolina?

Mr. BORAH. I do.

Mr. OVERMAN. I understand that under the thirteenth amendment it is made a crime for anybody to be held in peonage. Now, it has been charged, and there have been investigations, and there have been prosecutions, and there have been convictions in some of our Southern States, I am sorry to say, against people who have been raising cotton there by means of their colored men as tenants, and it was charged that they were held in slavery. Does the Senator mean to say that in addition to the convictions for peonage you can stop the farmer from shipping his cotton in interstate commerce where it has been raised by men who are held in peonage?

Mr. BORAH. I have not any doubt at all but that if the Supreme Court maintains the position which it has taken, the Government could say that no man shall ship an article which has been manufactured——

Mr. OVERMAN. Let us not confine it to manufacture.

Mr. BORAH. Well, upon which peonage labor has been employed to bring it into existence as a commercial commodity.

Mr. OVERMAN. Produced on a farm, let us say.

Mr. BORAH. Yes. I have not any doubt but that they could say that in addition to the punishment as a crime the instrumentalities of government may not be used by anybody who does practice this employment of peonage in the production of anything which goes immediately into interstate commerce.

Mr. OVERMAN. Would the Senator extend that to deprivation of a man of suffrage?

Mr. BORAH. Oh, no; I would not.

Mr. BRANDEGEE. Well, Mr. President——

Mr. CUMMINS. Mr. President, no individual has the power to deprive another of the right of suffrage.

Mr. OVERMAN. I meant whether it would be possible for the Government to deprive him of it.

Mr. SMITH of Georgia. Mr. President, is it not true that in the decisions heretofore upon this subject, in the lottery and the white-slave cases, the evils followed interstate transportation and were dependent upon it for consummation? Has the Supreme Court, in any instance, sustained the right to stop intrastate transportation, except where the evil was consummated through interstate transportation? And is not the striking difference between the proposed legislation and the past legislation the fact that now, for the first time, it is proposed to stop interstate shipments where the evil complained of was completed before the interstate transportation began?

Mr. BORAH. The evil in this instance is completed by means of the channels of interstate trade.

Mr. SMITH of Georgia. No.

Mr. BORAH. Yes; it is, I contend. I contend that it is, because the man could not carry on his business to the extent to which it is carried on by these manufacturers without having a market and the means of shipping his goods. It is positive means by which the man carries on his business.

Mr. SMITH of Georgia. First, I wanted to get the Senator to answer—and I suppose, of course, he will—that there is this marked difference between the past legislation which has been sustained and the proposed new legislation.

Mr. BORAH. The physical distinction which the Senator makes is true, that the consummation was at the time that the goods were delivered rather than at the time they were being produced.

Mr. SMITH of Georgia. The interstate transportation was an essential to making the evil possible—an essential to the consummation of the evil.

Mr. BORAH. I maintain that the channels of interstate commerce are essential to the maintenance and the existence and the employment of child labor; that if you deny them the channels of interstate trade there would not be any opposition to this matter here if it were not because of the fact that it is going to hurt somebody, and it is hurting somebody because they can not continue to employ these children unless they can ship their goods in interstate trade.

Mr. SMITH of Georgia. There is, however, the distinction that I have stated between anything that has been sustained before and the proposed new legislation.

Now I want to ask the Senator this question: If the new legislation is passed and sustained, then the question of the evil connected with the production inside the State becomes one really for congressional determination, does it not?—and the power would be in Congress to deny interstate transportation to practically anything produced in a State where, in the opinion of the Congress, there was evil connected with its production, and where you wanted to stop that evil.

Mr. BORAH. Wherever the Congress conceived that it had developed to such an extent as to come within police surveillance of the commerce clause.

Mr. HUGHES. An evil, the Senator said.

Mr. BORAH. Of course, if it is an evil.

Mr. SMITH of Georgia. If in the opinion of Congress it was an evil.

Mr. BORAH. Yes; certainly. I am assuming that Congress could not just arbitrarily say that anything was an evil. It would have to be inherently an evil and connected with interstate commerce in a reasonably intimate way.

Mr. SMITH of Georgia. They could not say that having a red head was an evil and base it on that.

Mr. BORAH. No.

Mr. SMITH of Georgia. But they could say that working a man longer than eight hours was an evil, and therefore that no goods could go into interstate commerce where anybody worked over eight hours.

Mr. BORAH. I believe conditions might arise which would make that true.

Mr. SMITH of Georgia.. Yes; and they could say that any except organized labor, or the reverse, was an evil and an unwise policy, and that the interstate transportation of the products of any mills that did not recognize organized labor, and so on, and so on, should cease.

Mr. BORAH. The Senator says "and so on, and so on," but there is a limit to these things. We have not an absolutely arbitrary Government. It has been the business of the Supreme Court of the United States for a hundred years to define the extent to which the Congress may go or to which State legislatures may go in the exercise of the police power, and, as they have said time and time again, "We can not say in advance what the State may do."

They have been asked to define the police power. They have refused to do it. When this state of facts comes up before them, as it will be there, they will be in a position to say whether or not it has reached the point where it is considered an evil or detrimental to the community.

Mr. President, I realize that in this rambling and interrupted way, in presenting these views as to the constitutionality of this act, I have in no sense exhausted the subject. Neither do I wish to be understood as saying that the question is free of doubt. I claim no more, in fact, than that there is a reasonable doubt under the decisions as to the unconstitutionality of the act. While, therefore, the subject is not wholly free of doubt, whatever doubt exists in view of the decisions, I am going to resolve that doubt in favor of the measure. If my mind were at rest as to the act being in violation of the Constitution, I would, of course, vote against it. I would do so as a matter of plain duty, for above all things are the obligations of the Constitution. I would do so, furthermore, as a matter of expediency, for nothing is to be gained by passing an unconstitutional act. But when there is only a doubt, when it is not fairly clear that the tribunal whose peculiar function it is to pass upon the question must hold the act void, and when the object to be accomplished by the bill is an exceedingly important and desirable one, I find no trouble, in accordance with what I conceive to be my duty here, in casting my vote in favor of passing the bill. I am unwilling to interpose nothing more than a doubt—it would have to be a conviction—between the passage of this measure and the beneficent results which it is believed will flow from its passage.

Behind this measure are among the deepest affections which we experience. Sustaining and urging it are among the tenderest and most searching emotions of the human heart. Only the plainest inhibition, therefore, of the fundamental law should cause us to hesitate when about to realize the attainment of so vital and inspiring an achievement. Only the plain letter of the charter should be permitted to prevail against the passage of the measure. On reviewing the decisions by the court I find principles announced by that tribunal whose learning we all recognize and whose exalted conceptions of modern government many of its greatest decisions unmistakably sustain, which seems to me to uphold the principles of the proposed law. If it should transpire that we are in error or if the court should modify its views as we construe them, our course in the future will be clear and we will at once set about to deal with the whole subject matter in accordance with the decision. If we have misconstrued the court's holding and read erroneously its decision, we will be so advised. On the other hand, if we are not in error as to the logic of the opinions heretofore rendered, the law must, in my judgment, be sustained.

Mr. BRANDEGEE. Mr. President, one remark made by the Senator from Idaho as he took his seat induces me to say a word or two, very briefly.

The Senator from Idaho says there must be a limit somewhere to the exercise by Congress of the powers which it is now attempting to exercise, under the authority of the commerce clause of the Constitution, to regulate commerce among the States. I hope there is a limit. I rather think we have arrived at that limit already. If we pass this bill, I think we shall have exceeded the limit.

I do not think the power to regulate commerce among the States was given to the Congress with any idea of its being used to bring about the correction of evils within the States that could be corrected by the States themselves. My notion about the cause that led the delegates to the Constitutional Convention out of which the Union was formed to give to Congress the power to regulate commerce among the several States and foreign nations is that it was in order that the channels of interstate communication might be kept open and in order that one State might not, at the expense of the other States, prohibit the use of the highways and the navigable rivers of the State to other States.

Mr. President, this bill does not purport, of course, either upon its face or in the utterances of its advocates, to be a regulation of commerce. The testimony before our committee was that it was an attempt to regulate the hours during which children might be employed in the several States and the ages at which they might be employed. It was only a regulation of commerce when the people who thought that certain States had not adopted laws relative to the labor of children as strict as they should be thought they could compel those States to pass laws to their satisfaction, not by regulating commerce but by prohibiting commerce of that State with any other State. I suppose it will be said that, of course, the power to regulate may include the power to prohibit. That may be so as an extreme definition; but I think it would behoove Congress, when it exercises the power to regulate commerce, to legislate honestly, with an honest intent to do what it pretends to be doing.

Mr. President, if Congress, under the authority to regulate commerce among the States, can say that no goods shall be transported out of a State into another State which were made in a factory where a child was employed more than a certain number of hours per day or under a certain age, on the ground that public sentiment favors the protection of children and the improvement of their condition, it seems to me that inasmuch as there is a great prohibition movement in the country, and a great many people think that the race would be elevated if they were total abstainers from alcoholic beverages, it would be equally within the power of Congress to say that no article should be carried beyond the borders of any State if it were manufactured in an establishment where any liquor was consumed by any of the employees.

A great many people think that it is the sentiment of the country, and the better sentiment, as they say, that woman suffrage should be established. If Congress can pass this law, it will soon be thinking that it could pass a law providing that no goods should be exported from any State that did not give equal suffrage to its citizens. As the Senator from Idaho says, there must be some limit; but seeing through the glass darkly, and into the twilight zone, there seems to me to be no more impassable gulf between the child-labor bill and the bills which would provide for such subjects as I have just indicated than there is between the child-labor bill and the bills about which the decisions have been read recently.

Mr. SMITH of Georgia. Mr. President——

Mr. BRANDEGEE. I yield to the Senator.

Mr. SMITH of Georgia. I only wanted to remind the Senator that in 1907 the Judiciary Committee of the House, Republicans and Democrats, unanimously reported most vigorously that the limit was passed before legislation of this kind was reached.

Mr. BORAH. Mr. President——

Mr. BRANDEGEE. I yield.

Mr. BORAH. Does the Senator think that the question of suffrage would in any way relate to the subject of commerce?

Mr. BRANDEGEE. No; any more than the regulation of the hours that children work in mills relates to the subject of interstate commerce; not a bit.

Mr. BORAH. Not a bit more; but does he think it does as much?

Mr. BRANDEGEE. Just as much; to my mind, exactly as much. I think the hours which children labor in the local mills and factories and mines of a particular State is as unrelated to commerce among the States as the hour at which the Senator from Idaho is accustomed to get his lunch.

Mr. BORAH. Of course if the Senator views it in that light—if the Senator thinks the employment in factories of children of the age of 8 and 10 years, working all hours of the day and under all conditions, is not a matter about which the National Government is in any way concerned; if he thinks it is not a question which in any way concerns the people as a whole throughout the country, and is wholly a matter for the particular State where the employment takes place—then certainly the Senator is right in his contention.

Mr. BRANDEGEE. The Senator knows perfectly well, if he can remember what he asked me, that he did not ask me any such question as that, and I did not answer any such question as that. I did not say that the question of how long children labored, or at what age they labored, was a matter in which the National Government was not concerned at all. The Senator asked me if I thought the question of woman suffrage related to interstate commerce, and I stated that I thought it related just as much to interstate commerce as the hours which children labored in factories related to interstate commerce; and I still think so.

Mr. BORAH. And I conceived, by the Senator's answer, that it was a matter of no concern whatever to the National Govern-

ment, because if the Senator had conceived it to be a matter of concern to the National Government he would not have said it was of no more concern than the hour at which the Senator from Idaho takes his lunch.

Mr. BRANDEGEE. I would not have said it, and I did not say it. I said it was no more related to the subject of interstate commerce than the hour at which the Senator takes his lunch.

Mr. BORAH. But that is related to interstate commerce.

Mr. BRANDEGEE. Well, they may transport the beef products to feed the Senator in interstate commerce, of course.

Mr. BORAH. I was not referring to the hour at which the Senator takes his lunch, but the manner in which the citizenship of the country is employed with reference to the articles which go into interstate commerce is a matter in which the National Government is concerned, both with reference to the employment and with reference to the shipment.

Mr. BRANDEGEE. The hours which the citizens of the several States are employed in their mills is of no concern; it has no relation whatever to the subject of interstate transportation. In fact, in many of the factories in the States the product of the factories is used right on the ground of that State. Many concerns are engaged exclusively in manufacturing products which are used in the mill right across the street from it, and they are built there for that purpose. The hours which that concern works its help or the ages which it works its help are absolutely unrelated to interstate commerce, of course, and they may be absolutely unrelated to intrastate transportation. It may not be taken off the ground; it may be used right in the same yard on the premises. So the question of the hours of labor and the ages of labor per se has nothing whatever to do with commerce among the States or with foreign nations over which Congress has exclusive jurisdiction.

Mr. BORAH. Let me ask the Senator a question?

Mr. BRANDEGEE. Certainly.

Mr. BORAH. Does the Senator think that the principle upon which the white-slave case was decided is sound?

Mr. BRANDEGEE. Of course, I can not say it is unsound, because it is the law and has been sustained by the Supreme Court.

Mr. BORAH. Then the Senator would be perfectly satisfied with this bill if the Supreme Court would sustain it?

Mr. BRANDEGEE. I would not be satisfied with it, but I would not say that it was unconstitutional if the Supreme Court said that it was constitutional.

Mr. BORAH. Why not?

Mr. BRANDEGEE. I should say I regretted they decided that way and that I thought they ought not to have so decided, but whatever the Supreme Court decides to be constitutional is constitutional in this country.

Mr. BORAH and Mr. HUGHES addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Connecticut yield and, if so, to whom?

Mr. BRANDEGEE. I yield to either one or to both. I first yield to the Senator from Idaho.

Mr. BORAH. Does the Senator think, then, that the decision of the Supreme Court of the United States in the white-slave case was unsound?

Mr. BRANDEGEE. I do not. I think——

Mr. BORAH. It is the law, but is it unsound?

Mr. BRANDEGEE. I think it went the limit. Between the Senator and myself I think it went the limit, and I think the Senator admits it went the limit, or did until he was prepared to take the next step and go the limit one higher.

Mr. BORAH. I do not concede that I have gone a single step further. I think this law is wholly within that case and previous cases. I do think, as I have said previously and I do not know but publicly, that the Supreme Court laid down the rule there that is as far as the Supreme Court will go, but I think under that rule this law can be sustained, and it does not go a step further than that position.

Mr. BRANDEGEE. I know the Senator thinks so, and I say he is perfectly honest in his belief; but the Senator stated the other day what the fact was, and every Senator knows not only what he stated but what they themselves stated they thought. The Senator said that until the last two or three decisions of the Supreme Court, which have stated that inasmuch as Congress has power to regulate commerce among the States they could not be deprived of it, nor could it be set aside as unconstitutional because in carrying out the power it imposes regulations which might partake of the nature of police power. I say when the Senator has read the last few decisions to that effect he admits his mind is changed, but before those decisions were made he stated here the other day he would have thought this bill was unconstitutional, and almost every lawyer would have said it was unconstitutional, and did say so until then. But in my judgment those decisions, whatever they may accomplish in the way of sustaining the act upon the facts presented in that case, will not make this law constitutional. I do not believe the Supreme Court will say it is constitutional.

Mr. BORAH rose.

Mr. BRANDEGEE. I yield to the Senator.

Mr. BORAH. I am frank to say it is upon the decisions of the Supreme Court of the United States that I base my belief that this law is constitutional.

Mr. BRANDEGEE. I did not misrepresent the Senator.

Mr. BORAH. Certainly not.

Mr. BRANDEGEE. I said exactly what the Senator said.

Mr. BORAH. Precisely. I contend that under these decisions the law can be sustained.

Mr. BRANDEGEE. I know the Senator thinks that these decisions have gone to the limit, I think a little further than the limit, and I have seen the Supreme Court reverse itself, sometimes retrace itself. The trouble about this kind of legislation is that Congress looks around after being petitioned and loaded with requests, all sorts of influences and pressure brought to bear upon it by parties who have organized the propaganda, which may be good, bad, or indifferent. It is a good propaganda in the State, so far as the welfare of children is concerned, but misdirected as to the remedy, in my opinion. The trouble is we do not purport to be doing what we actually are doing. It seems to me that if the police power, which the Senator from Idaho says the Congress must possess in order to carry its power to regulate commerce, is an existing thing it ought to be applied to the regulation of commerce.

The Senator from Idaho says the only reason why the Government has any police power is because it has the necessary power to carry out the powers conferred upon Congress. Then let the police power in regard to commerce be confined to the regulation of commerce, and let us not attempt to use police powers, if they be police powers, to pass a regulation of commerce, like safety appliances, and so forth, and the composition and safety of the instrumentalities of commerce, to compel the State, by a threat of impounding their products and putting boycotts on them as to communication with their neighbors, to change their laws to suit us or to superimpose the superior power of a nation upon them about matters of their domestic concern.

Mr. President, if the principle upon which this proposed legislation is based can be maintained, to wit, upon the theory that whenever Congress from time to time may think it would be for the benefit of the people, and on the ground that the Nation is as much interested in the health of the people of Savannah, Ga., as the people of Georgia are, we can say no products shall come out of any city of Georgia into the State of Alabama unless Georgia shall forthwith pave all its streets with asphalt pavement and promote and protect the health of her inhabitants, or unless its products are made by men who belong to labor unions or by men who do not belong to labor unions, or unless they have prohibition.

Mr. SMITH of Georgia. Or unless they enforce prohibition.

Mr. BRANDEGEE. Or unless they enforce prohibition, and then Georgia would never expect anything any more anywhere. [Laughter.]

But, Mr. President, Congress has limited itself in good faith to regulating commerce. There is nothing that we can not do if we can say that a prohibition of commerce is a regulation of commerce. Then whenever Congress adopts any standard of morals or any standard in its own mind as to what it is best to do in different parts of the country to promote the health and welfare of the people, under the old general-welfare clause if you please, then they can say unless every State will do this we will put an embargo on your products.

It may be that this is a progressive age, it may be that our Supreme Court has progressed to a point where they will sustain that, but in my opinion the court has to call a halt.

If Congress can legislate by way of embargo on perfectly innocent products of commerce necessary and legitimate to the business interests of this country and can legislate by embargo against a product of a State instead of keeping the channels of commerce open to legitimate commerce, the States will have no power whatever about their domestic concerns. We could just as well say in this bill that no products should be carried from one State to another unless the mill in which it was made had employees every one of whom had had a high-school education. The Senator from Idaho would stand up here and make a magnificent oration about the perpetuity of our institutions depending upon the education of our citizens.

Mr. BORAH. Mr. President——

Mr. BRANDEGEE. I yield to the Senator.

Mr. BORAH. I do not object to the Senator's criticizing my argument, but I object to the Senator referring to my legal argument as an oration.

Mr. BRANDEGEE. Cicero used to combine them both in one, and I think he was no wiser man than the Senator from Idaho himself. So, Mr. President, while I personally would go as far as anybody else I think to relieve distress or to promote the welfare, especially of little children, I think such projects ought to be carried out in a legal and constitutional method, and I do not think we ought to allow ourselves to be stampeded by the circulars and letters and articles that we see written by benevolently inclined people who do not understand the questions that we are discussing here. I do not think we ought to allow ourselves to be persuaded or to be intimidated by the threats to get votes or to withhold votes on questions of this kind. The form of this Government is at stake, Mr. President, in this kind of legislation.

Mr. BORAH. Mr. President——

Mr. BRANDEGEE. I yield to the Senator.

Mr. BORAH. The Senator concedes, of course, that Congress may prohibit the shipment of any commodity in interstate commerce that is deleterious or injurious.

Mr. BRANDEGEE. Yes; per se.

Mr. BORAH. Who is going to decide whether it is or not?

Mr. BRANDEGEE. Congress.

Mr. BORAH. Then the sole power to decide that is in Congress.

Mr. BRANDEGEE. I think so, except if it would be, as the Senator says, an arbitrary power the court would look through it. I think there could be a limit and the court could say that Congress had not acted in good faith.

Mr. BORAH. Can the Senator give me an idea where the limit is?

Mr. BRANDEGEE. Yes; but it would have to be such an extreme case that it would not be a reliable guide.

Mr. BORAH. That is it precisely. The Senator is dealing with that subject matter precisely as we are dealing with this subject matter. To a certain extent the discretion rests in Congress. Beyond a certain point, of course, anyone would denounce it as arbitrary, but within a wide range the Congress of the United States may exercise its judgment as to what is to the public interest and the public welfare and as to what is deleterious. As I said a while ago, as Marshall once said, there is really no limit under certain circumstances to the exercise of power except a change of Representatives in Congress.

Mr. BRANDEGEE. That may be so, Mr. President, and a change of judges of courts, because whether it will stand or not will depend upon the courts. I hope the Supreme Court of the United States would have in view the history of this Government as to what the States have been accustomed to do, what advances have been made under our dual form of government, and the way the commerce clause of our Constitution is being stretched not in good faith to accomplish all sorts of purposes that the National Government heretofore has never been supposed to have anything to do with whatever. I hope it will call the Supreme Court to a serious consideration of this matter.

Mr. President, there is nothing now that any sect or cult of people want to accomplish that they are in doubt about the power of Congress to respond to but what they say "you can do it under the commerce clause." You can not say to the people of the States, "You shall do this." Nobody claims we could say that no State shall allow a boy under 16 years old to work, but they do sometimes get up a theory that it is bad for a boy under 16 years old to work, and that is the sentiment, and if you pronounce that it is bad for him to work, and it would be in the interest of the public welfare that he did not work, then you say anybody who allows him to work shall be prohibited from sending anything into interstate commerce, and we are all the time being urged to do indirectly what everybody admits we can not do directly.

Mr. CUMMINS. Mr. President——

Mr. BRANDEGEE. I yield to the Senator.

Mr. CUMMINS. The Senator from Connecticut and myself have discussed this question so often in the committee I am sure he will bear with me a moment while I put an inquiry to him. I premise it with this statement of his view, as I understand it. It seems to be his opinion that Congress can not prevent the transportation of anything unless there is something wrong with the thing transported. That idea has been suggested many times. Now, let me ask the Senator, suppose three corporations in the State of Connecticut were to enter into a contract which was in violation of the antitrust law and which was in restraint of trade. That would be a crime under our law. Is the Senator of the opinion that Congress could not say that the product of those three corporations, assuming it to be a perfectly harmless or useful product, shall not be transported from one State to another?

Mr. BRANDEGEE. I do not think, Mr. President, that that is a parallel case; but if the Senator wants me to answer now I will do so, or if he wants me to wait I will do so.

Mr. CUMMINS. That is the question I ask.

Mr. BRANDEGEE. There is a series of questions like that that I think Congress could act upon. In the first place, the Senator has stated a case which is a crime under the Sherman antitrust law. I think that the Sherman Act does prohibit the transportation of goods by such parties now, and I think it would be illegal even if it does not. I am not sure that when a thing is prohibited by a statute of the United States it might not be possible for Congress to do that. While the debate was going on it occurred to me that the United States has a statute against polygamy. I do not know whether Congress could invoke the commerce clause of the Constitution to prevent the violators of its own law from using the instrumentalities of commerce. But those are cases where Congress has undoubted authority to pass the law. This is questioned.

Mr. CUMMINS. The whole antitrust law is founded on the commerce clause of the Constitution.

Mr. BRANDEGEE. Exactly.

Mr. CUMMINS. It has no other authority. I only put the question in order to make it perfectly clear that the argument so frequently made here that there must be some unsoundness or some taint in the character or the quality of the commodity transported must be abandoned; that there is nothing in that proposition. It does not follow that this law is constitutional, but the whole suggestion that the thing transported must be in and of itself injurious to the public health or morals or welfare must be abandoned.

Mr. BRANDEGEE. It may have been abandoned if the Senator from Idaho is right in the white-slave case.

Mr. CUMMINS. The Senator from Connecticut has just abandoned it.

Mr. BRANDEGEE. No; the Senator has suggested to me the case of the interstate-commerce law, which was passed under the commerce clause of the Constitution, prohibiting certain criminal conspiracies and denying the use of interstate-commerce roads to those violating that statute. I think quite possibly they might be prohibited. I am not sure if Congress, having passed a law against polygamy, might not deny the use of the channels of interstate-commerce communication to the violators of that law.

I am not sure about it, but it does seem to me, as the Senator from Idaho and, of course, the Senator from Iowa will both agree, that there must be a limit somewhere—and we are approaching that limit now—under the authority to regulate commerce, where the disposition to boycott the States of the Union which made this Constitution and created the National Government—the Colonies did it—there must be a place somewhere where the disposition to compel them to pass laws in accordance with the wishes of the Central Government will stop, because, unless it does, Mr. President, the States will simply be automatons either to make all their laws conform to our standards and our notions or else be prohibited from receiving from their neighbors any goods or shipping out their own products to the neighboring States. There must be some point, of course, where this stop, or else there is no use of having this dual form of government.

Of course, so long as Congress will continue to pass up to the Supreme Court all doubtful cases, to resolve all doubts in favor of the proposed legislation, we shall simply be, I think, treating the Supreme Court unfairly.

Mr. President, it is not a popular thing to stand up and try to keep legislative bodies within the lines of their constitutional authority where there is a great popular movement for some good cause, and a Senator thinks it is directed in the wrong channel. It is not a popular thing to get up here or elsewhere and stand by one's convictions and stand by the Constitution of the United States as you construe it, and yet we are sworn to do it, and I think we ought to do it.

I can not be honest with myself and vote for this bill. I wish I could. No doubt I should be much more popular at home and abroad and here and elsewhere if I could; but I think it is an unconstitutional bill, and I think the Supreme Court would have said so within a year or two ago.

I do not know what the Supreme Court will say about this bill now; but if we are going to pass up everything to the Supreme Court, shirk all our responsibility in the matter, and vote for measures that we think are unconstitutional, or that we think ninety-nine chances out of one hundred are that they are unconstitutional, I do not think we are treating the Supreme Court fairly. The Supreme Court of this country ought to have some

support; but if we are constantly going to throw upon the Supreme Court all the responsibility of setting aside acts we thought were unwise but that we passed in response to public clamor, we are, to a certain extent, depriving the Supreme Court of its right to have the support of a coordinate branch of the Government in trying to maintain the Constitution of the United States.

We all know what effect it has when a high court sets aside an act of Congress or an act of a State legislature the passage of which benevolent people had been able to procure. All the journals of the country, the magazine writers, and the "uplifters," a great many of whom deal in language and not in brains, who know nothing about the law, but are very versatile with epithets, denounce the Supreme Court and say it is time to haul it off the bench and have referendums and recalls and all that sort of thing.

Mr. President, if the Senate of the United States would do its duty as it sees it, and have the courage of its convictions, we should not have so much demagoguery in this country, there would be more respect for the courts, and, in the long run, there would be more respect for Senators and Representatives in Congress.

[Mr. THOMAS addressed the Senate. His entire speech is printed in the Senate proceedings of Saturday, August 5, 1916.]

Mr. ROBINSON. Mr. President, would it suit the convenience of the Senator from Colorado to suspend now? A request has been made for an executive session.

Mr. THOMAS. I will detain the Senate but a short time in the morning in the discussion of the amendment to which I have referred. I now yield the floor, as suggested by the Senator from Arkansas.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House agrees to the amendments of the Senate to the bill (H. R. 6180) for the relief of Lillie B. Randell.

The message also announced that the House agrees to the amendments of the Senate to the bill (H. R. 6181) for the relief of Letitia W. Garrison.

The message further announced that the House agrees to the amendments of the Senate to the bill (H. R. 15955) extending certain privileges of canal employees to other officials on the Canal Zone and authorizing the President to make rules and regulations affecting health, sanitation, quarantine, taxation, public roads, self-propelled vehicles, and police powers on the Canal Zone, and for other purposes, including provision as to certain fees, money orders, and interest deposits.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12717) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1917, and for other purposes; recedes from its disagreement to the amendment of the Senate numbered 50, and agrees to the same; recedes from its disagreement to the amendment of the Senate numbered 54, and agrees to the same with an amendment as follows: In lieu of the sum proposed insert "$8,549,735"; recedes from its disagreement to the amendment of the Senate numbered 112, and agrees to the same with an amendment as follows: In lieu of the sum proposed insert "$25,123,852"; and recedes from its disagreement to the amendment of the Senate numbered 223, and agrees to the same with an amendment as follows: In lieu of the sum proposed insert "$26,948,852."

The message further announced that the House disagrees to the amendments of the Senate to the bill (H. R. 15774) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1917, and for other purposes; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. PAGE of North Carolina, Mr. MCANDREWS, and Mr. DAVIS of Minnesota, managers at the conference on the part of the House.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H. R. 15494) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. BURKE, Mr. SHOUSE, and Mr. LANGLEY, managers at the conference on the part of the House.

The message further announced that the House disagrees to the amendments of the Senate to the bill (H. R. 16290) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. BURKE, Mr. SHOUSE, and Mr. LANGLEY, managers at the conference on the part of the House.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills and joint resolution, and they were thereupon signed by the Vice President:

H. R. 486. An act authorizing the Secretary of the Treasury to sell the old post-office building and site thereof at York, Pa.;

H. R. 2209. An act for the relief of W. W. Blood;

H. R. 2534. An act to adjudicate the claims of certain settlers in Sherman County, Oreg.;

H. R. 3896. An act for the relief of John H. Janssen;

H. R. 5864. An act for the relief of Thomas P. Sorkilmo;

H. R. 8318. An act for the relief of De Barbieri & Co., of Valparaiso, Chile;

H. R. 10116. An act for the relief of certain settlers under reclamation projects;

H. R. 10305. An act to grant certain lands to the State of Oregon as a public park, for the benefit and enjoyment of the people;

H. R. 10931. An act for the relief of Drs. Blair and Blake, Dr. W. J. Maxwell, Dr. R. C. Evans, and J. B. Blalock;

H. R. 11749. An act for the relief of the administrator of the estate of John M. Waples;

H. R. 12208. An act adding certain lands to the Teton National Forest, Wyo.;

H. R. 13785. An act for the relief of Sarah S. Plank;

H. R. 14483. An act to authorize the construction of a bridge across the Missouri River at or near the city of Williston, N. Dak.;

H. R. 14534. An act permitting the Missouri River Transportation Co. to construct, maintain, and operate a bridge across the Missouri River in the State of Montana;

H. R. 14823. An act to authorize the Savage Bridge Co. to construct, maintain, and operate a bridge across the Yellowstone River in the State of Montana;

H. R. 15318. An act granting the consent of Congress to the village and township of Hendrum, Norman County, Minn., and the township of Elm River, Traill County, N. Dak., to construct a bridge across the Red River of the North on the boundary line between said States;

H. R. 15322. An act granting the consent of Congress to Traill County, N. Dak., to construct a bridge across the Red River of the North;

H. R. 15635. An act for the relief of the Eastern Transportation Co.;

H. R. 16097. An act to extend the time for constructing a bridge across the Missouri River near Kansas City, Mo., authorized by an act approved June 17, 1914;

H. R. 16554. An act to extend the time of the Hudson River Connecting Railroad Corporation for the commencement and completion of its bridge across the Hudson River, in the State of New York; and

H. J. Res. 184. Joint resolution providing for one year's extension of time to make installment payments for the land of the former Fort Niobrara Military Reservation, Nebr.

PETITIONS AND MEMORIALS.

Mr. WARREN presented a petition of sundry citizens of Rock Springs, Wyo., praying for the settlement of difficulties between the railroads and their employees by the Interstate Commerce Commission, which was referred to the Committee on Interstate Commerce.

Mr. KERN presented a petition of sundry citizens of Nappanee, Ind., praying for national prohibition, which was referred to the Committee on the Judiciary.

He also presented memorials from sundry citizens of Indianapolis, North Manchester, Marion, Muncie, Angola, Kingman, Shelbyville, Elkhart, Lawrenceburg, South Bend, and Gary, all in the State of Indiana, remonstrating against the proposed taxation of gross receipts of moving-picture shows, which were referred to the Committee on Finance.

Mr. PHELAN presented a memorial of sundry employees of the Hercules Powder Co., of San Diego, Cal., remonstrating against the levying of the proposed 8 per cent tax on munitions of war, which was referred to the Committee on Finance.

Mr. OLIVER presented a petition of sundry citizens of Zelienople, Pa., praying for the adoption of an amendment to the Constitution to prohibit polygamy, which was referred to the Committee on the Judiciary.

He also presented a petition of the Petroleum Iron Works Safety Committee, of Sharon, Pa., praying for the enactment of

legislation providing compulsory military training for young men and also placing the military organizations under the supervision of the Federal Government, which was referred to the Committee on Military Affairs.

GAS SERVICE IN HAWAII.

Mr. SHAFROTH, from the Committee on Pacific Islands and Porto Rico, to which was referred the bill (H. R. 15777) to ratify, approve, and confirm an act duly enacted by the Legislature of the Territory of Hawaii, as amended by Congress, relating to the granting of a franchise for the purpose of manufacturing and supplying gas in the district of South Hilo, County of Hawaii, Territory of Hawaii, reported it without amendment, and submitted a report (No. 753) thereon.

SUSQUEHANNA RIVER BRIDGES.

Mr. SHEPPARD. From the Committee on Commerce I report back favorably without amendment the bill (H. R. 16534) to authorize the commissioners of Lycoming County, Pa., their successors in office, to construct a bridge across the West Branch of the Susquehanna River from the foot of Arch Street, in the city of Williamsport, Lycoming County, Pa., to the borough of Duboistown, Lycoming County, Pa., and I submit a report (No. 754) thereon. The Senator from Pennsylvania states that the county commissioners are ready to proceed with the construction of this work, and I call the attention of the Senator to the bill.

Mr. OLIVER. I ask unanimous consent for the present consideration of the bill.

The VICE PRESIDENT. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

Mr. SHEPPARD. From the Committee on Commerce I report back favorably without amendment the bill (H. R. 16604) to authorize the commissioners of Lycoming County, Pa., and their successors in office, to construct a bridge across the West Branch of the Susquehanna River from the borough of Montgomery, Lycoming County, Pa., to Muncy Creek Township, Lycoming County, Pa., and I submit a report (No. 755) thereon. I call the attention of the Senator from Pennsylvania [Mr. OLIVER] to the bill.

Mr. OLIVER. I ask unanimous consent for the present consideration of the bill.

The VICE PRESIDENT. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. BRANDEGEE:

A bill (S. 6749) granting an increase of pension to Laura L. Noyes (with accompanying papers); to the Committee on Pensions.

By Mr. SMITH of Maryland:

A bill (S. 6750) to provide for the appointment of the register of wills of the District of Columbia by the justices of the supreme court of said District; to the Committee on the District of Columbia.

A bill (S. 6751) for the relief of the heirs of Osborn Cross; to the Committee on Claims.

By Mr. POINDEXTER:

A bill (S. 6752) for the relief of Napoleon Le Clerc; to the Committee on Public Lands.

By Mr. CLARK of Wyoming:

A bill (S. 6753) granting an increase of pension to Mary J. Pierson; to the Committee on Pensions.

PENSIONS AND INCREASE OF PENSIONS—CONFERENCE REPORT.

Mr. HUGHES submitted the following conference report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 15957) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 3, 4, 5, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 29, 30, and 37.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 6, 7, 8, 11, 18, 21, 24, 25, 26, 27, 28, 31, 32, 33, 34, 35, and 36, and agree to the same.

WM. HUGHES,
T. TAGGART,
REED SMOOT,
Managers on the part of the Senate.

EDWARD KEATING,
CARL VINSON,
SAM R. SELLS,
Managers on the part of the House.

The report was agreed to.

AGRICULTURAL APPROPRIATIONS.

The VICE PRESIDENT laid before the Senate the action of the House of Representatives agreeing to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12717) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1917, and for other purposes, receding from its disagreement to the amendment of the Senate No. 50, receding from its disagreement to the amendments of the Senate Nos. 54, 112, and 223 each with an amendment, in which it requested the concurrence of the Senate.

Mr. SMITH of South Carolina. I move that the Senate concur in the amendments of the House to the amendments of the Senate.

The motion was agreed to.

PENSIONS AND INCREASE OF PENSIONS.

The VICE PRESIDENT laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 16290) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. JOHNSON of Maine. I move that the Senate insist upon its amendments, agree to the conference asked for by the House, the conferees on the part of the Senate to be appointed by the Chair.

The motion was agreed to; and the Vice President appointed Mr. JOHNSON of Maine, Mr. HUGHES, and Mr. SMOOT conferees on the part of the Senate.

The VICE PRESIDENT laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 15494) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent children of soldiers and sailors of said war and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. JOHNSON of Maine. I move that the Senate insist upon its amendments, agree to the conference asked for by the House, the conferees on the part of the Senate to be appointed by the Chair.

The motion was agreed to; and the Vice President appointed Mr. JOHNSON of Maine, Mr. HUGHES, and Mr. SMOOT conferees on the part of the Senate.

PRESIDENTIAL APPROVAL.

A message from the President of the United States, by Mr. Latta, one of his secretaries, announced that the President had, on the 3d instant, approved and signed the following joint resolution:

S. J. Res. 160. Joint resolution appropriating $540,000 for the relief of flood sufferers in the States of North Carolina, South Carolina, Georgia, Alabama, Florida, Tennessee, and Mississippi, and for other purposes.

EXECUTIVE SESSION.

Mr. ROBINSON. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session the doors were reopened.

Mr. ROBINSON. I move that the Senate adjourn until to-morrow morning at 10 o'clock.

The motion was agreed to; and (at 6 o'clock and 18 minutes p. m., Friday, August 4, 1916) the Senate adjourned until to-morrow, Saturday, August 5, 1916, at 10 o'clock a. m.

NOMINATIONS.

Executive nominations received by the Senate August 4 (legislative day of August 1), 1916.

POSTMASTERS.

CONNECTICUT.

Albert B. Goodrich to be postmaster at Berlin, Conn., in place of H. L. Porter. Incumbent's commission expired July 23, 1916.

ILLINOIS.

A. R. Godknecht to be postmaster at Palatine, Ill., in place of William Wilson. Incumbent's commission expires August 9, 1916.

MARYLAND.

John W. D. Jump to be postmaster at Easton, Md., in place of R. R. Walker. Incumbent's commission expires August 6, 1916.

MASSACHUSETTS.

James J. Hunt to be postmaster at Winchendon, Mass., in place of W. H. Pierce. Incumbent's commission expired March 21, 1916.

NEW YORK.

William S. Charles to be postmaster at Hornell, N. Y., in place of J. C. McGreevy (not commissioned), resigned.

Alfred Cox to be postmaster at Hawthorne, N. Y., in place of Alfred Cox. Incumbent's commission expires August 6, 1916.

Edward C. Elliott to be postmaster at Orangeburg, N. Y., in place of Thomas Havey, declined.

Benjamin Franklin to be postmaster at Ovid, N. Y., in place of Charles H. Kinne, resigned.

OREGON.

Elizabeth Thompson to be postmaster at Nyssa, Oreg., in place of Elizabeth Thompson. Incumbent's commission expired April 5, 1916.

SOUTH DAKOTA.

C. H. Bonnin to be postmaster at Wagner, S. Dak., in place of C. H. Bonnie, to correct name of appointee.

TEXAS.

J. L. Wilson to be postmaster at Celina, Tex., in place of T. S. Hunter. Incumbent's commission expired July 16, 1916.

CONFIRMATIONS.

Executive nominations confirmed by the Senate August 4 (legislative day of August 1), 1916.

MEMBER OF THE BOARD OF CHARITIES.

David J. Kaufman, to be a member of the Board of Charities of the District of Columbia for a term of three years.

POSTMASTERS.

DELAWARE.

Fredonia C. Lofland, Lewes.

GEORGIA.

W. W. McMillan, Thomaston.

ILLINOIS.

William F. Meyer, jr., Arlington Heights.

MISSISSIPPI.

Mary C. Booze, Mound Bayou.

HOUSE OF REPRESENTATIVES.

FRIDAY, *August 4, 1916.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

We bless Thee, Infinite Spirit, our heavenly Father, for that spark of divinity which Thou hast imparted unto us, which lifts us above the brute creation and makes us Thy children. "When it breathes through the intellect it is genius; when it breathes through the will it is virtue; when it flows through the affections it is love." Help us to appreciate the dignity thus bestowed upon us, that we may stoop to no mean nor petty thing in our transactions with our fellow men, but rise continually unto the larger, grander, purer, nobler life in Christ Jesus our Lord. Amen.

The Journal of the proceedings of Wednesday, August 2, 1916, was read and approved.

CANAL ZONE.

Mr. ADAMSON. Mr. Speaker, I ask the Speaker to lay before the House the bill (H. R. 15955) which is on the Speaker's desk, with Senate amendments.

The SPEAKER. The Chair lays before the House the bill (H. R. 15955) with Senate amendments. The Clerk will report it by title and also the Senate amendments.

The Clerk read as follows:

An act (H. R. 15955) extending certain privileges of canal employees to other officials on the Canal Zone and authorizing the President to make rules and regulations affecting health, sanitation, quarantine, taxation, public roads, self-propelled vehicles, and police powers on the Canal Zone, and for other purposes, including provision as to certain fees, money orders, and interest deposits.

The Senate amendments were read.

Mr. ADAMSON. Mr. Speaker, I move to concur in the Senate amendments.

The motion was agreed to.

On motion of Mr. ADAMSON, a motion to reconsider the vote by which the amendments were concurred in was laid on the table.

WITHDRAWAL OF PAPERS.

By unanimous consent, Mr. DALE of New York was granted leave to withdraw from the files of the House, without leaving copies, the papers in the case of Adolf Hartman, H. R. 1332, Sixty-fourth Congress, first session, no adverse report having been made thereon.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Waldorf, one of its clerks, announced that the Senate had insisted upon its amendments to the bill (H. R. 13391) to amend the act approved December 23, 1913, known as the Federal reserve act, had agreed to the conference asked for by the House, and had appointed Mr. OWEN, Mr. HITCHCOCK, and Mr. NELSON as the conferees on the part of the Senate.

The message also announced that the Senate had agreed to the amendments of the House to the bill (S. 3069) to amend an act entitled "An act to amend an act entitled 'An act to amend an act entitled "An act to regulate commerce,"' approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved March 4, 1915.

The message also announced that the Senate had passed with amendments to the bill (H. R. 15774) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1917, and for other purposes, in which the concurrence of the House of Representatives was requested.

The message also announced that the Senate had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12717) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1917, and for other purposes.

The message also announced that in accordance with the provisions of the resolution (H. Con. Res. 50) agreed to July 26, 1916, the Vice President had canceled his signature to the enrolled bill (H. R. 12197) entitled "An act authorizing Ashley County, Ark., to construct a bridge across Bayou Bartholomew."

ENROLLED BILLS SIGNED.

Mr. LAZARO, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills and joint resolution of the following titles, when the Speaker signed the same:

H. R. 14483. An act to authorize the construction of a bridge across the Missouri River at or near the city of Williston, N. Dak.;

H. R. 12208. An act adding certain lands to the Teton National Forest, Wyo.;

H. R. 13785. An act for the relief of Sarah S. Plank;

H. R. 14534. An act permitting the Missouri River Transportation Co. to construct, maintain, and operate a bridge across the Missouri River in the State of Montana;

H. R. 15635. An act for the relief of the Eastern Transportation Co.;

H. R. 5864. An act for the relief of Thomas P. Sorkilmo;

H. R. 8318. An act for the relief of De Barbieri & Co., of Valparaiso, Chile;

H. R. 15322. An act granting the consent of Congress to Traill County, N. Dak., to construct a bridge across the Red River of the North;

H. R. 10116. An act for the relief of certain settlers under reclamation projects;

H. R. 16554. An act to extend the time of the Hudson River Connecting Railroad Corporation for the commencement and completion of its bridge across the Hudson River, in the State of New York;

H. J. Res. 184. Joint resolution providing for one year's extension of time to make installment payments for the land of the former Fort Niobrara Military Reservation, Nebr.;